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PART II—Section 2 Bills and Reports of Select Committees on Bills

PARLIAMENT OF INDIA

The following Bill was introduced in Parliament on the 27th March, 1950:—

BILL No. 25 OF 1950

A Bill further to amend the Indian Patents and Designs Act, 1911.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Indian Patents and Designs (Amendment) Act, 1950.

2. Amendment of Act II of 1911.—In the Indian Patents and Designs Act, 1911 (hereinafter referred to as the said Act), for the words “the States”, wherever they occur, the word “India” shall be substituted.

3. Amendment of section 1, Act II of 1911.—In section 1 of the said Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) It extends to the whole of India except the State of Jammu and Kashmir.”

4. Amendment of section 2, Act II of 1911.—In section 2 of the said Act,—

(a) for clause (7) the following clause shall be substituted, namely:—

“(7) ‘High Court’ means, with reference to any area,—

(a) in relation to a Part A State or a Part B State, the High Court for that State;

(b) in relation to Ajmer, the High Court at Allahabad;

(c) in relation to Bhopal and Vindhya Pradesh, the High Court at Nagpur;

(d) in relation to Bilaspur, Delhi and Himachal Pradesh, the High Court of Punjab;

(e) in relation to Coorg, the High Court at Madras;

(f) in relation to Kutch, the High Court at Bombay;

(g) in relation to Manipur and Tripura, the High Court of Assam;

(h) in relation to the Andaman and Nicobar Islands, the High Court at Calcutta;"

(b) after clause (7) the following clause shall be inserted, namely:—
“(7A) ‘India’ does not include the State of Jammu and Kashmir;” and

(c) clause (16) shall be omitted.

5. Insertion of new section 2A in Act II of 1911.—After section 2 of the said Act, the following section shall be inserted, namely:—

“2A. Rule of construction in application of Act to Part B States.—In the application of this Act to any Part B State, unless the context otherwise requires,—

(a) references to any enactment in force in Part A States but not in force in that Part B State shall be construed as references to the corresponding law, if any, in force in that State;

(b) references to a court or authority in existence in Part A States but not in existence in that Part B State shall be construed as references to the corresponding court or authority, if any, in that State.”

6. Substitution of new sections for sections 22, 23 and 23A in Act II of 1911.—For sections 22, 23 and 23A of the said Act, the following sections shall be substituted, namely:—

“22 Application for licence—(1) At any time after the expiration of three years from the date of the sealing of a patent any person interested may apply to the Controller upon any one or more of the grounds specified in sub-section (2) for a licence under the patent.

(2) The grounds upon which an application under sub-section (1) may be made are as follows, that is to say,—

(a) that the patented invention, being capable of being commercially worked in India, has not been commercially worked therein or is not being so worked to the fullest extent that is reasonably practicable;

(b) that a demand for the patented article in India is not being met to an adequate extent or on reasonable terms, or is being met to a substantial extent by importation of the patented article from other countries,

(c) that the commercial working of the invention in India is being prevented or hindered by the importation of the patented article from other countries;

(d) that by reason of the refusal of the patentee to grant a licence or licences on reasonable terms—

(i) a market for the export of the patented article manufactured in India is not being supplied, or

(ii) the working or efficient working in India of any other patented invention which makes a substantial contribution to the establishment or development of commercial or industrial activities in India is unfairly prejudiced,

(e) that by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, the manufacture, use or sale of

materials not protected by the patent or the establishment or development of commercial or industrial activities in India is unfairly prejudiced.

(3) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent; and no person shall be estopped from alleging any of the matters specified in sub-section (2) by reason of any admission made by him, whether in such a licence or otherwise, or by reason of his having accepted such a licence.

(4) In this section the expression 'patented article' includes any article made by a patented process.

28. *Relief in respect of an application under section 22.*—(1) Where an application is made under section 22 the Controller may make an order granting any of the following reliefs, that is to say, the Controller may—

(a) grant a licence to the applicant upon such terms as the Controller thinks fit; and may also where the circumstances so require direct that all other existing licences in respect of the patent shall be revoked, or that the patentee shall forfeit any right which he may have as a patentee, to make, use, exercise or vend the invention or to grant licences under the patent;

(b) revoke any existing licence held by the applicant and grant a new licence upon such terms as the Controller thinks fit, or amend any licence held by the applicant in such manner as the Controller may think fit;

(c) grant a licence under the patent to such customers of the applicant and on such terms as the Controller thinks fit, if the Controller is satisfied that the manufacture, use or sale of materials not protected by the patent is unfairly prejudiced by reason of conditions imposed by the patentee upon the grant of licences under the patent or upon the purchase, hire or use of the patented article or process.

Provided that where the application is made on the ground that the patented invention is not being commercially worked in India or is not being worked to the fullest extent that is reasonably practicable and it appears to the Controller that the time which has elapsed since the granting of the patent has for any reason been insufficient to enable it to be so worked, he may, by order, adjourn the application for such period as will, in his opinion, give sufficient time for the invention to be so worked.

(2) Except in cases where the terms of a licence have been settled by mutual agreement and such terms otherwise provide, any person to whom a licence has been granted under sub-section (1) shall be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent and if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as though he were the patentee, making the patentee a defendant and a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

28A. *Endorsement of patent on application by Government.*—(1) At any time after the expiration of three years from the date of the sealing of a patent, the Central Government may apply to the Controller upon

any one or more of the grounds specified in sub-section (2) of section 22 for the endorsement of the patent with the words 'Licences of Right'.

(2) An application under this section may also be made on the ground that by the refusal of the patentee to grant a licence or licences on reasonable terms the establishment or development of commercial or industrial activities in India is unfairly prejudiced or the development of an industry, the control of which by the Union is declared by Parliament by law to be expedient in the public interest, is being prevented or hindered.

(3) Where a patent of addition is in force, any application under sub-section (1) either for the endorsement of the original patent or the patent of addition shall be deemed to be an application for the endorsement of both the patents and where any such application is granted or refused it shall be deemed to have been granted or refused in respect of both the patents.

(4) All endorsements of patents made under this section shall be entered in the Register of Patents maintained under section 20.

(5) For the removal of doubts it is hereby declared that nothing in this section shall affect the right of the Central Government or any State Government to make an application for the grant of a licence in respect of any industrial undertaking or trading activity owned or carried on by such Government.

23B. Provision as to patents endorsed 'Licences of Right'.—(1) Where the Controller has made an endorsement upon a patent 'Licences of Right'—

(a) any person shall at any time after such endorsement be entitled as of right to a licence under the patent upon such terms as in default of agreement may be settled by the Controller on the application either of the patentee or of the person applying for a licence;

(b) the Controller may, on the application of a person holding a licence granted under the patent before the endorsement, order the licence to be revoked and grant a new licence by virtue of the endorsement upon terms to be settled in the aforesaid manner;

(c) if in proceedings for the infringement of the patent (otherwise than by the importation of the patented article from other countries) the infringing defendant is ready and willing to take a licence upon terms to be settled by the Controller, no injunction against him shall be awarded, and the amount recoverable against him by way of damages, if any, shall not exceed double the amount which would have been recoverable against him as licensee if the licence had been dated prior to the earliest infringement;

(d) the renewal fees payable in respect of a patent so endorsed shall, as from the date of the endorsement, be one moiety only of the fees which would otherwise have been payable.

(2) The provisions of sub-section (2) of section 23 shall apply to any licence granted under sub-section (1) as they apply to a licence granted under the said section 23.

23C. Exercise of powers on application under section 22 or section 23A.—(1) The powers of the Controller upon an application under section 22 or section 23A shall be exercised with a view to securing the following general purposes, that is to say,—

(a) that inventions which can be worked on a commercial scale in India and which should in the public interest be so worked shall be

worked therein without undue delay and to the fullest extent that is reasonably practicable;

(b) that the inventor or other person beneficially entitled to a patent shall receive reasonable remuneration having regard to the nature of the invention;

(c) that the interests of any person for the time being working or developing an invention in India under the protection of a patent is not unfairly prejudiced.

(2) Subject to the provisions of sub-section (1), the Controller shall, in determining whether to make an order in pursuance of any such application or not, take account of the following matters, that is to say,—

(a) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;

(b) the ability of any person to whom a licence is to be granted under the order to work the invention to the public advantage; and

(c) the risks to be undertaken by that person in providing capital and working the invention if the application is granted;

but shall not take account of matters subsequent to the making of the application.

28D. *Procedure on application under section 22 or section 23A.*—

(1) Every application under section 22 or section 23A shall specify the nature of the order sought by the applicant and shall contain a statement setting out the nature of the applicant's interest, if any, and the facts upon which the application is based.

(2) Where the Controller is satisfied, upon consideration of any such application, that a *prima facie* case has been made out for the making of an order, he shall direct the applicant to serve copies of the application upon the patentee and any other persons appearing from the Register of Patents to be interested in the patent in respect of which the application is made.

(3) The patentee or any other person desiring to oppose the application may, within such time as may be prescribed or within such further time as the Controller may, on application made either before or after the expiration of the prescribed time allow, give to the Controller notice of opposition.

(4) Any such notice of opposition shall contain a statement setting out the grounds on which the application is opposed.

(5) Where any such notice of opposition is duly given the Controller shall notify the applicant, and shall give to the applicant and the opponent an opportunity to be heard before deciding the case.

28E. *Supplementary provisions with respect to orders under section 23 or section 23B.*—(1) Any order made by the Controller under section 23 or section 23B for the grant of a licence shall, without prejudice to any other mode of enforcement have effect as if it were a deed, executed by the patentee and all other necessary parties, granting a licence in accordance with the order.

(2) Notwithstanding anything contained in this Act no order shall be made in pursuance of an application under section 23 or section 23B which would be at variance with any treaty, convention, arrangement or engagement applying to India and any other country.

28F. Appeals.—(1) An appeal shall lie to the High Court at Calcutta from any order of the Controller made under section 23 or under clause (a) or clause (b) of sub-section (1) of section 23B.

(2) Every such appeal shall be made within three months of the date of the order passed by the Controller and shall be in writing and accompanied by the prescribed fee.

(3) In calculating the said period of three months, the time, if any, occupied in granting a copy of the order appealed against shall be excluded.

23G. Procedure for hearing of appeals.—(1) When an appeal has been preferred to the High Court at Calcutta under section 28F, it shall be heard by a Bench of not less than two Judges.

(2) The Bench hearing the appeal may, if it thinks fit, and shall, on the request of the parties to the appeal, call in the aid of an assessor specially qualified for the purpose, and hear the appeal wholly or partially with his assistance.

(3) The remuneration, if any, to be paid to an assessor under this section shall in every case be determined by the High Court and be paid by it as part of the expenses of the execution of this Act.”

7. Amendment of section 75, Act II of 1911.—In section 75 of the said Act, after clause (7) the following clause shall be inserted, namely:—

“(8) applications for endorsement of patent with the words ‘Licences of Right’,”

8. Amendment of section 78A, Act II of 1911.—In sub-section (4) of section 78A of the said Act, the words “or the law of any Part B State” and the words “or in that State, as the case may be” shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Indian Patents and Designs Act, 1911, was enacted at a time when India had not developed industrially. With the progress of industrial development in the country it has become necessary to amend the law so as to ensure that patent rights are not abused to the detriment of the consumer or to the prejudice of the trade or the industrial development of the country.

The present Bill seeks to amend the Act with that object in view. The provisions of the Bill are based on the recommendations of the Patents Enquiry Committee appointed by the Government of India and on a study of the recent amendments of the Patent Law in the United Kingdom.

SYAMA PRASAD MOOKERJEE.

NEW DELHI;

The 21st February, 1950.

The following Report of the Select Committee on the Bill to consolidate and amend the law relating to the government of the regular Army, was presented to Parliament on the 21st March, 1950:—

We, the undersigned, members of the Select Committee, to which the Bill to consolidate and amend the law relating to the government of the regular Army was referred, have considered the Bill and have now the honour to submit this our Report with the Bill as amended by us annexed thereto.

In considering the Bill we had before us the amendments suggested by the Select Committee in the Air Force Bill—a Bill which is drawn up in almost identical terms—and also the recommendations made by two sub-committees of our own Committee to which the detailed consideration of those parts of the Bill which deal with offences and punishments and procedural matters were respectively delegated.

Upon the changes proposed by us which are not formal or consequential we note as follows.

Clause 3.—We have inserted a definition of "civil prison" and have at the same time revised, from a drafting point of view and also in the light of the altered conditions now prevailing the definitions of "junior commissioned officer", "non-commissioned officer" and "officer".

Clause 4.—Sub-clause (1) has been recast so as to enable the Army Act to be applied, with or without modifications, to the forces of any Part B State which has a separate force.

Clause 12 is new and incorporates the relevant provision contained in the Armed Forces (Miscellaneous Provisions) Ordinance, 1950 (VIII of 1950). In our opinion this is a desirable restriction which should be imposed by law in exercise of the powers given to Parliament by article 88 of the Constitution.

Clause 17 is omitted as it has become now unnecessary, and the earlier clauses have been renumbered.

Clauses 19 and 20.—In our opinion the exercise of powers of dismissal, removal, etc., should be expressly made subject to the Act and the rules and regulations made thereunder, although we are assured that this is so as a matter of practice.

Clause 21.—This clause has been revised in the light of the relevant provisions contained in the Armed Forces (Miscellaneous Provisions) Ordinance, 1950.

Clause 26.—We think that the Central Government should be given power to revise any decision by the Commander-in-Chief, and we have revised sub-clause (5) accordingly.

Clause 40.—This clause has been revised as in the Air Force Bill.

Clause 52.—In our opinion it is sufficient to prescribe a punishment of ten years' imprisonment for offences in respect of property and not fourteen years as suggested in the Bill.

Clause 53.—We think that extortion and corruption are serious offences and the punishment therefor should be enhanced from seven years to ten years.

Clause 64.—The offence under sub-clause (a) of this clause is a very serious offence and, therefore, we have enhanced the punishment therefor from seven years to ten years.

Clause 58.—For an offence under sub-clause (a) a fraudulent intention should be a necessary ingredient.

Clause 102.—Sub-clause (4) which was vague has now been recast in the light of the relevant provision in the Armed Forces (Miscellaneous Provisions) Ordinance, 1950.

Clause 107.—We have inserted a proviso declaring that no officer may be arrested or detained otherwise than on the order of another officer.

Clauses 122 and 123.—The word "mutiny" is not defined but is used in section 37 along with several allied or similar offences. We have, therefore, avoided the use of the word "mutiny" in both the clauses by amending them suitably and omitting at the same time the definition of that word in sub-clause (5) of clause 122.

Clause 154.—In our opinion sentences of death, in particular, should be given effect to only after confirmation by the Central Government, and we have, therefore, deleted the reference to Commander-in-Chief in this clause. Further, we are assured that our intention will be given effect to by inserting in the warrant issued under clause 156 the necessary restrictions in this behalf.

Clause 164.—This clause has been revised as in the Air Force Bill.

Clause 177.—In our opinion prisoners should have the right to interview their relatives or legal practitioners subject to suitable restrictions, and we have, therefore, added a sub-clause providing for this matter.

Clause 191.—We have amended item (e) of sub-section (2) to provide for the appointment of prosecutors at trials by courts-martial.

2. The Bill was published in Part V of the *Gazette of India*, dated the 81st December, 1949.

3. We think that the Bill has not been so altered as to require circulation under the rules, and we recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR.
 B. R. AMBEDKAR.
 BALDEV SINGH.
 AWADHESHWAR PRASAD SINHA
 B. SHIVA RAO.
 MAHAVIR TYAGI.
 S. K. A. MEERAN.
 RAJ BAHADUR.
 H. V. KAMATH.
 P. S. DESHMUKH.
 MAJOR GENERAL HIMATSINHJI.
 S. SIVAN PILLAY.
 G. R. ETHIRAJULU NAIDU.
 R. N. GOENKA.
 G. DURGABAI.
 T. H. SONAVANE.
 P. RANGA REDDI.

NEW DELHI;

The 21st March, 1950.

A. BILL No. 83 of 1949.

(AS AMENDED BY THE SELECT COMMITTEE.)

*(Words sidelined or underlined indicate amendments suggested by the Committee; asterisks indicate omissions.)*A
BILL*to consolidate and amend the law relating to the government of the regular Army.*

* * * * *

Be it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Army Act, 1950.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. Persons subject to this Act.—(1) The following persons shall be subject to this Act wherever they may be, namely:—

(a) officers, junior commissioned officers and warrant officers of the regular Army;

(b) persons enrolled under this Act;

(c) persons belonging to the Indian Reserve Forces;

(d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;

(e) officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (1) of section 9 of the Territorial Army Act, 1948 (LVI of 1948);

(f) persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(g) officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(h) persons belonging to the land forces of a Part B State, when such persons are attached to any body of the regular Army for service, or when the whole or a part of the said forces is acting with any body of the regular Army or is placed at the disposal of the Central Government in pursuance of a notification under section 5;

(i) persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army.

(2) Every person subject to this Act under clauses (a) to (h) of sub-section (1) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.

3. Definitions.—In this Act, unless the context otherwise requires,—

(i) “active service”, as applied to a person subject to this Act, means the time during which such person—

(a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or

(b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or

(c) is attached to or forms part of a force which is in military occupation of a foreign country;

(ii) “civil offence” means an offence which is triable by a criminal court;

(iii) “civil prison” means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894 (IX of 1894), or under any other law for the time being in force;

(iv) “Commander in-Chief” means the officer commanding-in-chief the regular Army;

(v) “commanding officer”, when used in any provision of this Act, with reference to any separate portion of the regular Army or to any department thereof, means the officer whose duty it is under the regulations of the regular Army, or in the absence of any such regulations, by the custom of the service, to discharge with respect to that portion of the regular Army or that department, as the case may be, the functions of a commanding officer in regard to matters of the description referred to in that provision;

(vi) “corps” means any separate body of persons subject to this Act, which is prescribed as a corps for the purposes of all or any of the provisions of this Act;

(vii) “court-martial” means a court-martial held under this Act;

(viii) “criminal court” means a court of ordinary criminal justice in any part of India, other than the State of Jammu and Kashmir;

(ix) “department” includes any division or branch of a department;

(x) “enemy” includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to military law to act;

(xi) “the Forces” means the regular Army, Navy and Air Force or any part of any one or more of them;

(xii) “junior commissioned officer” means a person commissioned, gazetted or in pay as a junior commissioned officer in the regular Army* * * * or the Indian Reserve Forces, and includes a person holding a junior commission in the Indian Supplementary Reserve Forces, or the Territorial Army or a junior or equivalent commission in the land forces of a Part B State, who is for the time being subject to this Act;

(xiii) "military custody" means the arrest or confinement of a person according to the usages of the service and includes naval or air force custody;

(xiv) "military reward" includes any gratuity or annuity for long service or good conduct,* * * * * good service pay or pension, and any other military pecuniary reward;

(xv) "non-commissioned officer" means a person holding a non-commissioned rank or an acting non-commissioned rank in the regular Army or the Indian Reserve Forces, and includes a non-commissioned officer or acting non-commissioned officer of the Indian Supplementary Reserve Forces or the territorial Army or the land forces of a Part B State, who is for the time being subject to this Act;

(xvi) "notification" means a notification published in the Official Gazette;

(xvii) "offence" means any act or omission punishable under this Act and includes a civil offence as hereinbefore defined;

(xviii) "officer" means a person commissioned, gazetted or in pay as an officer in the regular Army, and includes—

* * * * *

(a) an officer of the Indian Reserve Forces;

(b) an officer holding a commission in the Territorial Army granted by the President with designation of rank corresponding to that of an officer of the regular Army who is for the time being subject to this Act;

(c) an officer of the Army in India Reserve of Officers who is for the time being subject to this Act;

(d) an officer of the Indian Regular Reserve of Officers who is for the time being subject to this Act;

(e) an officer of the land forces of any Part B State who is for the time being subject to this Act,

(f) in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the Navy or Air Force;

but does not include a junior commissioned officer, warrant officer, petty officer or non-commissioned officer;

(xix) "prescribed" means prescribed by rules made under this Act;

(xx) "provost-marshall" means a person appointed as such under section 107 and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf;

(xxi) "regular Army" means officers, junior commissioned officers, warrant officers, non-commissioned officers and other enrolled persons who, by their commission, warrant, terms of enrolment or otherwise, are liable, to render continuously for a term military service to the Union in any part of the world, including persons belonging to the Reserve Forces and the Territorial Army when called out on permanent service;

(xxii) "regulation" includes a regulation made under this Act;

(xxii) "superior officer", when used in relation to a person subject to this Act, includes a junior commissioned officer, warrant officer and a non-commissioned officer, and, as regards persons placed under his orders, an officer, warrant officer, petty officer and non-commissioned officer of the Navy or Air Force;

(xxiv) "warrant officer" means a person appointed, gazetted or in pay as a warrant officer of the regular Army or of the Indian Reserve Forces, and includes a warrant officer of the Indian Supplementary Reserve Forces or of the Territorial Army or of the land forces of a Part B State who is for the time being subject to this Act;

(xxv) all words and expressions used but not defined in this Act and defined in the Indian Penal Code (Act XLV of 1860) shall be deemed to have the meanings assigned to them in that Code.

CHAPTER II

SPECIAL PROVISIONS FOR THE APPLICATION OF ACT IN CERTAIN CASES

4. Application of Act to certain forces under Central Government.—(1) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government, including any force maintained by a Part B State, and suspend the operation of any other enactment for the time being applicable to the said force.

(2) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the regular Army the same or equivalent rank as the aforesaid persons hold for the time being in the said force.

(3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by or are in the service of or are followers of or accompany any portion of the said force as they have effect in respect of persons subject to this Act under clause (i) of section 2.

(4) While any of the provisions of this Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

5. Application of Act to forces of Acceding States.—(1) The Central Government may, by notification, direct that any person or persons belonging to the land forces of any Part B State shall be attached to any body of the regular Army or that the whole or a part of the said forces shall act with any body of the regular Army, or shall be placed at the disposal of the Central Government, and thereupon the persons so attached and members of the said force shall become subject to this Act.

(2) The relative rank of officers, junior commissioned officers, warrant officers and non-commissioned officers of such forces and of the regular Army shall be such as may be determined by the Central Government or by such other authority as may be prescribed.

6. Special provision as to rank in certain cases.—(1) The Central Government may, by notification, direct that any persons or class of persons subject to this Act under clause (i) of section 2 shall be so subject as officers, junior commissioned officers, warrant officers or non-commissioned officers and may authorise any officer to give a like direction and to cancel such direction.

(2) All persons subject to this Act other than officers, junior commissioned officers, warrant officers and non-commissioned officers shall, if they are not

persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

7. Commanding officer of persons subject to military law under clause (i) of section 2.—(1) Every person subject to this Act under clause (i) of section 2 shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps, department or detachment, if any, to which he is attached, and, if he is not so attached, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person for the time being is serving, or any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force.

(2) An officer commanding a force shall not place a person subject to this Act under clause (i) of section 2 under the command of an officer of rank inferior to that of such person, if there is present at the place where such person is any officer of a higher rank under whose command he can be placed.

8. Officers exercising powers in certain cases.—(1) Whenever persons subject to this Act are serving under an officer commanding any military organisation, not in this section specifically named and being in the opinion of the Central Government not less than a brigade, that Government may prescribe the officer by whom the powers, which under this Act may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.

(2) The Central Government may confer such powers, either absolutely or subject to such restrictions, reservations, exceptions and conditions, as it may think fit.

9. Power to declare persons to be on active service.—Notwithstanding anything contained in clause (i) of section 3, the Central Government may, by notification, declare that any person or class of persons subject to this Act shall, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, be deemed to be on active service within the meaning of this Act.

CHAPTER III COMMISSION, APPOINTMENT AND ENROLMENT

10. Commission and appointment.—The President may grant, to such person as he thinks fit, a commission as an officer, or as a junior commissioned officer or appoint any person as a warrant officer of the regular Army.

11. Ineligibility of aliens for enrolment.—No person who is not a citizen of India shall, except with the consent of the Central Government signified in writing, be enrolled in the regular Army:

Provided that nothing contained in this section shall bar the enrolment of the subjects of Nepal in the regular Army.

12. Ineligibility of females for enrolment or employment.—No female shall be eligible for enrolment or employment in the regular Army, except in such corps, department, branch or other body forming part of, or attached to any portion of, the regular Army as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that nothing contained in this section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxiliary to the regular Army or any branch thereof in which females are eligible for enrolment or employment.

13. Procedure before enrolling officer.—Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled: and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

14. Mode of enrolment.—If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment, he shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled.

15. Validity of enrolment.—Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any corps or department shall be deemed to have been duly enrolled and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever; and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim, affect his position as an enrolled person under this Act or invalidate any proceeding, act or thing taken or done prior to his discharge.

16. Persons to be attested.—The following persons shall be attested, namely:—

(a) all persons enrolled as combatants;

(b) all persons selected to hold a non commissioned or acting non-commissioned rank; and

(c) all other persons subject to this Act as may be prescribed by the Central Government.

17. Mode of attestation.—(1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present, or by any other prescribed person.

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will bear true allegiance to the Constitution of India as by law established, and that he will serve in the regular Army and go wherever he is ordered by land, sea or air, and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

CHAPTER IV

CONDITIONS OF SERVICE

18. Tenure of service under the Act.—Every person subject to this Act shall hold office during the pleasure of the President.

19. Termination of service by Central Government.—Subject to the provisions of this Act and the rules and regulations made thereunder the Central Government may dismiss, or remove from the service, any person subject to this Act.

20. Dismissal, removal or reduction by Commander-in-Chief and by other officers.—(1) The Commander-in-Chief may dismiss or remove from the service any person subject to this Act other than an officer.

(2) The Commander-in-Chief may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.

(3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.

(4) Any such officer as is mentioned in sub-section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.

(5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a sepoy.

(6) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.

(7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder.

21. Power to modify certain fundamental rights in their application to persons subject to this Act.—Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act—

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations;

(b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;

(c) to communicate with the press or to publish or cause to be published any book, letter or other document.

22. Retirement, release or discharge.—Any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed.

23. Certificate on termination of service.—Every junior commissioned officer, warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding

officer with a certificate, in the language which is the mother tongue of such person and also in the English language setting forth—

- (a) the authority terminating his service;
- (b) the cause for such termination; and
- (c) the full period of his service in the regular Army.

24. Discharge or dismissal when out of India.—(1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

(3) Where any such person as is mentioned in sub-section (2) is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of transportation or imprisonment, a portion of such sentence may be inflicted before he is sent to India.

(4) For the purposes of this section, the word "discharge" shall include release, and the word "dismissal" shall include removal.

CHAPTER V

SERVICE PRIVILEGES

25. Authorised deductions only to be made from pay.—The pay of every person subject to this Act due to him as such under any regulation for the time being in force shall be paid without any deduction other than the deductions authorised by or under this or any other Act.

26. Remedy of aggrieved persons other than officers.—(1) Any person subject to this Act other than an officer who deems himself wronged by any superior or other officer may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant; or, when necessary, refer the complaint to superior authority.

(4) Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority.

(5) The Central Government may revise any decision by the Commander-in-Chief under sub-section (2), but, subject thereto, the decision of the Commander-in-Chief shall be final.

27. Remedy of aggrieved officers.—Any officer who deems himself wronged by his commanding officer or any superior officer and who on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complain to the Central Government in such manner as may from time to time be specified by the proper authority.

28. Immunity from attachment.—Neither the arms, clothes, equipment, accoutrements or necessaries of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and

allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue officer in satisfaction of any decree or order enforceable against him.

29. Immunity from arrest for debt.—(1) No person subject to this Act shall, so long as he belongs to the Forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue officer.

(2) The judge of any such court or the said officer may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no court-fee shall be payable by the complainant.

30. Immunity of persons attending courts-martial from arrest.—(1) No presiding officer or member of a court-martial, no judge advocate, no party to any proceeding before a court-martial, or his legal practitioner or agent and no witness acting in obedience to a summons to attend a court-martial shall, while proceeding to, attending, or returning from, a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

31. Privileges of reservists.—Every person belonging to the Indian Reserve Forces shall, when called out for or engaged in or returning from, training or service, be entitled to all the privileges accorded by sections 28 and 29 to a person subject to this Act.

32. Priority in respect of army personnel's litigation.—(1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate from the proper military authority of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or of any application by or on behalf of any such person, for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for its inability to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall at once be referred by the court to an officer having power not less than a brigade or equivalent commander whose decision shall be final.

33. Saving of rights and privileges under other laws.—The rights and privileges specified in the preceding sections of this Chapter shall be in addition to, and not in derogation of, any other rights and privileges conferred on persons subject to this Act or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

CHAPTER VI

OFFENCES

34. Offences in relation to the enemy and punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit any of the said acts; or
- (b) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or
- (c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or
- (d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or
- (e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or
- (f) treacherously or through cowardice sends a flag of truce to the enemy; or
- (g) in time of war or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or
- (h) in time of action leaves his commanding officer or his post, guard, picket, patrol or party without being regularly relieved or without leave; or
- (i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or
- (j) knowingly harbours or protects an enemy not being a prisoner; or
- (k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or
- (l) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

35. Offences in relation to the enemy and not punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner, fails to rejoin his service when able to do so; or

(b) without due authority holds correspondence with or communicates intelligence to the enemy or having come by the knowledge of any such correspondence or communication, wilfully omits to discover it immediately to his commanding or other superior officer; or

(c) without due authority sends a flag of truce to the enemy;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

36. Offences punishable more severely on active service than at other times.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) forces a safeguard, or forces or uses criminal force to a sentry; or

(b) breaks into any house or other place in search of plunder; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, picquet, patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp, garrison, or quarters; or spreads reports calculated to create unnecessary alarm or despondency; or

(f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received;

shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned, and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

37. Mutiny.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) begins, incites, causes, or conspires with any other persons to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

38. Desertion and aiding desertion.—(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial,

if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned, and

if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who, knowingly harbours any such deserter shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

39. Absence without leave.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) absents himself without leave; or

(b) without sufficient cause overstays leave granted to him; or

(c) being on leave of absence and having received information from proper authority that any corps, or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or

(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or

(e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or

(f) when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or

(g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

40. Striking or threatening superior officers.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening * * * language to such officer;

(c) uses insubordinate language to such officer;

shall, on conviction by court-martial,

if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

41. Disobedience to superior officer.—(1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall on conviction by court-martial,

if he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits such offence when not on active service, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

42. Insubordination and obstruction.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being concerned in any quarrel, affray, or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or

(b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or

(c) resists an escort whose duty it is to apprehend him or to have him in charge; or

(d) breaks out of barracks, camp or quarters; or

(e) neglects to obey any general, local or other order; or

(f) impedes the provost-marshals or any person lawfully acting on his behalf, or when called upon, refuses to assist in the execution of his duty a provost-marshals or any person lawfully acting on his behalf; or

(g) uses criminal force to or assaults any person bringing provisions or supplies to the forces;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses (d) and (e) to two years, and in the case of the offences specified in the other clauses to ten years, or such less punishment as is in this Act mentioned.

43. Fraudulent enrolment.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) without having obtained a regular discharge from the corps or department to which he belongs, or otherwise fulfilled the conditions enabling him to enrol or enter, enrolls himself in, or enters the same or any other corps or department or any part of the naval or air forces of India or the Territorial Army; or

(b) is concerned in the enrolment in any part of the forces of any person when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

44. False answers on enrolment.—Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

45. Unbecoming conduct.—Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is a junior commissioned officer or a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.

46. Certain forms of disgraceful conduct.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

(c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

47. Ill-treating a subordinate.—Any officer, junior commissioned officer, warrant officer or non-commissioned officer who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

48. Intoxication.—(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is not an officer, be liable, subject to the provisions of sub-section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

49. Permitting escape of person in custody.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when in command of a guard, picket, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse, any person committed to his charge, or refuses to receive any prisoner or person so committed; or

(b) wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard;

shall, on conviction by court martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such

less punishment as is in this Act mentioned; and if he has not acted wilfully, to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

50. Irregularity in connection with arrest or confinement.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or

(b) having committed a person to military custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty-eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

51. Escape from custody.—Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

52. Offences in respect of property.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law; or

(b) dishonestly misappropriates or converts to his own use any such property; or

(c) commits criminal breach of trust in respect of any such property; or

(d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or

(e) wilfully destroys or injures any property of the Government entrusted to him, or

(f) does any other thing with intent to defraud or to cause wrongful gain to one person or wrongful loss to another person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

53. Extortion and corruption.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

54. Making away with equipment.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him; or

(b) loses by neglect anything mentioned in clause (a); or

(c) sells, pawns, destroys or defaces any medal or decoration granted to him;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend in the case of the offences specified in clause (a) to ten years, and in the case of the offences specified in the other clauses to five years, or such less punishment as is in this Act mentioned.

55. Injury to property.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) * * * destroys or injures any property mentioned in clause (a) of section 54 or any property belonging to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or serving with, or attached to, the regular Army; or

(b) commits any act, * * * * * which causes damage to, or destruction of, any property of the Government by fire; or

(c) * * * kills, injures, makes away with, ill-treats or loses any animal entrusted to him;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned, and if he has acted without reasonable excuse, to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

56. False accusations.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false; or

(b) in making a complaint under section 26 or section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false or knowingly and wilfully suppresses any material facts;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

57. Falsifying official documents and false declaration.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

58. Signing in blank and failure to report.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when signing any document relating to pay, arms, ammunition, equipment, clothing, supplies or stores, or any property of the Government, fraudulently leaves in blank any material part for which his signature is a voucher; or

(b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

59. Offences relating to courts-martial.—Any person subject to this Act who commits any of the following offences, that is to say:—

(a) being duly summoned or ordered to attend as a witness before a court-martial, wilfully or without reasonable excuse, makes default in attending; or

(b) refuses to take an oath or make an affirmation legally required by a court-martial to be taken or made; or

(c) refuses to produce or deliver any document in his power or control legally required by a court-martial to be produced or delivered by him; or

(d) refuses when a witness to answer any question which he is by law bound to answer; or

(e) is guilty of contempt of court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

60. False evidence.—Any person subject to this Act who, having been duly sworn or affirmed before any court-martial or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

61. Unlawful detention of pay.—Any officer, junior commissioned officer, warrant officer or non-commissioned officer who, having received the pay of a person subject to this Act unlawfully detains or refuses to pay the same when due, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

62. Offences in relation to aircraft and flying.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) wilfully or without reasonable excuse damages, destroys or loses any aircraft or aircraft material belonging to the Government; or

(b) is guilty of any act or neglect likely to cause such damage, destruction or loss; or

(c) without lawful authority disposes of any aircraft or aircraft material belonging to the Government; or

(d) is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person; or

(e) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration, by or under the authority of a neutral State, or the destruction in a neutral State of any aircraft belonging to the Government;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned, and, in any other case, to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

63. Violation of good order and discipline.—Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

64. Miscellaneous offences.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(b) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or

(d) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a rifle, sword or other offensive weapon; or

(e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or

(f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving; shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

65. Attempt.—Any person subject to this Act who attempts to commit any of the offences specified in sections 84 to 64 inclusive and in such attempt does any act towards the commission of the offence shall, on conviction by court-martial, where no express provision is made by this Act for the punishment of such attempt, be liable,

if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

66. Abetment of offences that have been committed.—Any person subject to this Act who abets the commission of any of the offences specified in sections 84 to 64 inclusive shall, on conviction by court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

67. Abetment of offences punishable with death and not committed.—Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 94, 97 and sub-section (I) of section 98 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

68. Abetment of offences punishable with imprisonment and not committed.—Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive and punishable with imprisonment shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

69. Civil offences.—Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,—

(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and

(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.

70. Civil offences not triable by court-martial.—A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial, unless he commits any of the said offences—

- (a) while on active service, or
- (b) at any place outside India, or
- (c) at a frontier post specified by the Central Government by notification in this behalf.

Explanation.—In this section and in section 69, “India” does not include the State of Jammu and Kashmir.

CHAPTER VII

PUNISHMENTS

71. Punishments awardable by courts-martial.—Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by courts-martial, according to the scale following, that is to say,—

- (a) death;
- (b) transportation for life or for any period not less than seven years;
- (c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;
- (d) cashiering, in the case of officers;
- (e) dismissal from the service;
- (f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers, and reduction to the ranks or to a lower rank or grade, in the case of non-commissioned officers;

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepy;

- (g) forfeiture of seniority of rank, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;
- (h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;
- (i) severe reprimand or reprimand, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers;
- (j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;
- (k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;
- (l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

72. Alternative punishments awardable by court-martial.—Subject to the provisions of this Act, a court-martial may, on convicting a person subject to this Act of any of the offences specified in sections 34 to 68 inclusive, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 71, regard being had to the nature and degree of the offence.

73. Combination of punishments.—A sentence of a court-martial may award in addition to, or without any one other punishment, the punishment specified in clause (d) or clause (e) of section 71 and any one or more of the punishments specified in clauses (f) to (l) of that section.

74. Cashiering of officers.—An officer shall be sentenced to be cashiered before he is awarded any of the punishments specified in clauses (a) to (c) of section 71.

75. Field punishment.—Where any person subject to this Act and under the rank of warrant officer commits any offence on active service, it shall be lawful for a court-martial to award for that offence any such punishment as is prescribed as a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb and shall not include flogging.

76. Position of field punishment in scale of punishments.—Field punishment shall for the purpose of commutation be deemed to stand next below dismissal in the scale of punishments specified in section 71.

77. Result of certain punishments in the case of a warrant officer or non-commissioned officer.—A warrant officer or a non-commissioned officer sentenced by a court-martial to transportation, imprisonment, field punishment or dismissal from the service, shall be deemed to be reduced to the ranks.

78. Retention in the ranks of a person convicted on active service.—When, on active service, any enrolled person has been sentenced by a court-martial to dismissal, or to transportation or imprisonment whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and such service shall be reckoned as part of his term of transportation or imprisonment, if any.

79. Punishments otherwise than by court-martial.—Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a court-martial and in the manner stated in sections 80, 83, 84 and 85.

80. Punishment of persons other than officers, junior commissioned officers and warrant officers.—Subject to the provisions of section 81, a commanding officer or such other officer as is, with the consent of the Central Government, specified by the Commander-in-Chief, may, in the prescribed manner, proceed against a person subject to this Act otherwise than as an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,—

- (a) imprisonment in military custody up to twenty-eight days;
- (b) detention up to twenty-eight days;
- (c) confinement to the lines up to twenty-eight days;
- (d) extra guards or duties;
- (e) deprivation of a position of the nature of an appointment or of corps or working pay, and in the case of non-commissioned officers, also deprivation of acting rank or reduction to a lower grade of pay;
- (f) forfeiture of good service and good conduct pay;
- (g) severe reprimand or reprimand;
- (h) fine up to fourteen days' pay in any one month;
- (i) penal deductions under clause (g) of section 91;

(j) any prescribed field punishment up to twenty-eight days, in the case of a person on active service.

81. Limit of punishments under section 80.—(1) An award of punishment under section 80 shall not include field punishment in addition to one or more of the punishments specified in clauses (a), (b) and (c) of that section.

(2) In the case of an award of two or more of the punishments specified in clauses (a), (b), (c) and (d) of the said section, the punishment specified in clause (c) or clause (d) shall take effect only at the end of the punishment specified in clause (a) or clause (b).

(3) When two or more of the punishments specified in the said clauses (a), (b) and (c) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-two days.

(4) The punishments specified in clauses (a), (b), (c) and (j), of section 80 shall not be awarded to any person who is of the rank of non-commissioned officer or was, at the time of committing the offence for which he is punished, of such rank.

(5) The punishment specified in clause (g) of the said section shall not be awarded to any person below the rank of a non-commissioned officer.

82. Punishments in addition to those specified in section 80.—The Commander-in-Chief may, with the consent of the Central Government, specify such other punishments as may be awarded under section 80 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishments may be awarded.

83. Punishment of officers, junior commissioned officers and warrant officers by brigade commanders and others.—An officer having power not less than a brigade, or an equivalent commander or such other officer as is, with the consent of the Central Government, specified by the Commander-in-Chief may in the prescribed manner, proceed against an officer below the rank of a field officer, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

(a) severe reprimand or reprimand;

(b) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

84. Punishment of officers, junior commissioned officers and warrant officers by area commanders and others.—An officer having power not less than an area commander or an equivalent commander or an officer empowered to convene a general court-martial or such other officer as is, with the consent of the Central Government, specified by the Commander-in-Chief may, in the prescribed manner, proceed against an officer below the rank of lieutenant-colonel, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

(a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a court-martial;

(b) severe reprimand or reprimand;

(c) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

85. Punishment of junior commissioned officers.—A commanding officer or such other officer as is, with the consent of the Central Government, specified by the Commander-in-Chief may, in the prescribed manner, proceed against a junior commissioned officer who is charged with an offence under this Act and award the punishment of stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

86. Transmission of proceedings.—In every case in which punishment has been awarded under any of the sections 83, 81 and 85, certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment, to a superior military authority as defined in section 88.

87. Review of proceedings.—If any punishment awarded under any of the sections 83, 84 and 85 appears to a superior military authority as defined in section 88 to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

88. Superior military authority.—For the purpose of sections 86 and 87, 'superior military authority' means—

(a) in the case of punishments awarded by a commanding officer, any officer superior in command to such commanding officer;

(b) in the case of punishments awarded by any other authority, the Central Government, the Commander-in-Chief or other officer specified by the Commander-in-Chief.

89. Collective fines.—(1) Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, army corps, division or independent brigade to which such unit belongs may, after obtaining the report of a court of inquiry, impose a collective fine upon the junior commissioned officers, warrant officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

(2) Such fine shall be assessed as a percentage on the pay of the individuals on whom it falls.

CHAPTER VIII

PENAL DEDUCTIONS

90. Deductions from pay and allowances of officers.—The following penal deductions may be made from the pay and allowances of an officer, that is to say,—.

(a) all pay and allowances due to an officer for every day he absents himself without leave, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government;

(b) all pay and allowances for every day while he is in custody or under suspension from duty on a charge for an offence for which he is afterwards convicted by a Criminal Court or a court-martial or by an officer exercising authority under section 83 or section 84;

(c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;

(d) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be determined by the court-martial by whom he is convicted of such offence, or by an officer exercising authority under section 83 or section 84;

(e) all pay and allowances ordered by a court-martial or an officer exercising authority under section 85 to be forfeited or stopped;

(f) any sum required to pay a fine awarded by a criminal court or a court-martial exercising jurisdiction under section 69;

(g) any sum required to make good any loss, damage, or destruction of public or regimental property which, after due investigation, appears to the Central Government to have been occasioned by the wrongful act or negligence on the part of the officer;

(h) all pay and allowances forfeited by order of the Central Government if the officer is found by a court of inquiry constituted by the Commander-in-Chief in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of, the enemy, or in any manner to have aided the enemy, or to have allowed himself to be taken prisoner by the enemy through want of due precaution or through disobedience of orders or wilful neglect of duty, or having been taken prisoner by the enemy, to have failed to rejoin his service when it was possible to do so;

(i) any sum required by order of the Central Government to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

91. Deductions from pay and allowances of persons other than officers.—Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than an officer, that is to say,—

(a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of transportation or imprisonment awarded by a criminal court, a court-martial or an officer exercising authority under section 80, or of field punishment awarded by a court-martial or such officer;

(b) all pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a criminal Court or a court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment or field punishment by an officer exercising authority under section 80;

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him;

(d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Central Government or such officer as may be specified by that Government;

(e) all pay and allowances ordered by a court-martial or by an officer exercising authority under any of the sections 80, 83, 84 and 85, to be forfeited or stopped;

(f) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by, or while in the hands of, the enemy;

(g) any sum required to make good such compensation for any expenses, loss, damage or destruction caused by him to the Central Government or to any building or property as may be awarded by his commanding officer;

(h) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 69, or an officer exercising authority under any of the sections 80 and 89;

(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

92. Computation of time of absence or custody.—For the purposes of clauses (a) and (b) of section 91,—

(a) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person;

(c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody;

(d) a period of absence, or imprisonment, which commences before, and ends after, midnight may be reckoned as a day.

93. Pay and allowances during trial.—In the case of any person subject to this Act who is in custody or under suspension from duty on a charge for an offence, the prescribed officer may direct that the whole or any part of the pay and allowances of such person shall be withheld, pending the result of his trial on the charge against him, in order to give effect to the provisions of clause (b) of sections 90 and 91.

94. Limit of certain deductions.—The total deductions from the pay and allowances of a person made under clauses (e), (g) to (i) of section 91 shall not, except where he is sentenced to dismissal, exceed in any one month one-half of his pay and allowances for that month.

95. Deduction from public money due to a person.—Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

96. Pay and allowances of prisoner of war during inquiry into his conduct.—Where the conduct of any person subject to this Act when being taken prisoner by, or while in the hands of, the enemy, is to be inquired into under this Act or any other law, the Commander-in-Chief or any officer authorised by him may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.

97. Remission of deductions.—Any deduction from pay and allowances authorised by this Act may be remitted in such manner and to such extent, and by such authority, as may from time to time be prescribed.

98. Provision for dependants of prisoner of war from remitted deductions.—In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under clause (h) of section 90 or clause (a) of section 91, but in respect of whom a remission has been made under section 97, it shall be lawful for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

99. Provision for dependants of prisoner of war from his pay and allowances.—It shall be lawful for proper provision to be made by the prescribed authorities for any dependants of any person subject to this Act who is a prisoner of war or is missing, out of his pay and allowances.

100. Period during which a person is deemed to be a prisoner of war.—For the purposes of sections 98 and 99, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 96, and if he is cashiered or dismissed from the service in consequence of such conduct, until the date of such cashiering or dismissal.

CHAPTER IX

ARREST AND PROCEEDINGS BEFORE TRIAL

101. Custody of offenders.—(1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) An officer may order into military custody any officer, though he may be of a higher rank, engaged in a quarrel, affray or disorder.

102. Duty of commanding officer in regard to detention.—(1) It shall be the duty of every commanding officer to take care that a person under his command when charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him to be impracticable having regard to the public service.

(2) The case of every person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported by the commanding officer to the general or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

(3) In reckoning the period of forty-eight hours specified in sub-section (1), Sundays and other public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Central Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in military custody, pending the trial by any competent authority for any offence committed by him.

103. Interval between committal and court-martial.—In every case where any such person as is mentioned in section 101 and as is not on active service remains in such custody for a longer period than eight days, without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed, and a similar report shall be forwarded at intervals of every eight days until a court-martial is assembled or such person is released from custody.

104. Arrest by civil authorities.—Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

105. Capture of deserters.—(1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs, shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of

the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into military custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

106. Inquiry into absence without leave.—(1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

107. Provost-marshals.—(1) Provost-marshals may be appointed by the Commander-in-Chief or by any prescribed officer.

(2) The duties of a provost-marshall *** are to take charge of persons confined for any offence, to preserve good order and discipline, and to prevent breaches of the same by persons serving in, or attached to, the regular Army.

(3) A provost-marshall may at any time arrest and detain for trial any person subject to this Act who commits, or is charged with, an offence, and may also carry into effect any punishment to be inflicted in pursuance of the sentence awarded by a court-martial, or by an officer exercising authority under section 80 but shall not inflict any punishment on his own authority:

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

(4) For the purposes of sub-sections (2) and (3), a provost-marshall shall be deemed to include a provost-marshall appointed under any law for the time being in force relating to the government of the Navy or Air Force, and any person legally exercising authority under him or on his behalf.

CHAPTER X

COURTS-MARTIAL

108 Kinds of courts-martial.—For the purposes of this Act there shall be four kinds of courts-martial, that is to say,—

- (a) general courts-martial;
- (b) district courts-martial;
- (c) summary general courts-martial; and
- (d) summary courts-martial.

109. Power to convene a general court-martial.—A general court-martial may be convened by the Central Government or the Commander-in-Chief or by any officer empowered in this behalf by warrant of the Commander-in-Chief.

110. Power to convene a district court-martial.—A district court-martial may be convened by an officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of any such officer.

111. Contents of warrants issued under sections 109 and 110.—A warrant issued under section 109 or section 110 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

112. Power to convene a summary general court-martial.—The following authorities shall have power to convene a summary general court-martial, namely,—

(a) an officer empowered in this behalf by an order of the Central Government or of the Commander-in-Chief;

(b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;

(c) an officer commanding any detached portion of the regular Army on active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a general court-martial.

113. Composition of general court-martial.—A general court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain.

114. Composition of district court-martial.—A district court-martial shall consist of not less than three officers, each of whom has held a commission for not less than two whole years.

115. Composition of summary general court-martial.—A summary general court-martial shall consist of not less than three officers.

116. Summary court-martial.—(1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed.

117. Dissolution of courts-martial.—(1) If a court-martial after the commencement of a trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

(2) If, on account of the illness of the judge advocate or of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) The officer who convened a court-martial may dissolve such court-martial if it appears to him that military exigencies or the necessities of discipline render it impossible or inexpedient to continue the said court-martial.

(4) Where a court martial is dissolved under this section, the accused may be tried again.

118. Powers of general and summary general courts-martial.—A general or summary general court-martial shall have power to try any person subject to this Act for any offence punishable therin and to pass any sentence authorised thereby.

119. Powers of district courts-martial.—A district court-martial shall have power to try any person subject to this Act other than an officer or a junior commissioned officer for any offence made punishable therein, and to pass any sentence authorised by this Act other than a sentence of death, transportation, or imprisonment for a term exceeding two years:

Provided that a district court-martial shall not sentence a warrant officer to imprisonment.

120. Powers of summary courts-martial.—(1) Subject to the provisions of sub-section (2), a summary court-martial may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 89, or any offence against the officer holding the court.

(3) A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer, junior commissioned officer or warrant officer.

(4) A summary court-martial may pass any sentence which may be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be one year if the officer holding the summary court-martial is of the rank of lieutenant-colonel and upwards, and three months if such officer is below that rank.

121. Prohibition of second trial.—When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under any of the sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

122. Period of limitation for trial.—(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years from the date of such offence.

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of ~~desertion or fraudulent enrolment or for any of the offences mentioned in section 37.~~

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.

* * * * *

123. Liability of offender who ceases to be subject to Act.—(1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject.

(2) No such person shall be tried for an offence, unless his trial commences within six months after he had ceased to be subject to this Act:

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of * * desertion or fraudulent enrolment or for any of the offences mentioned in section 37 or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a court-martial.

(3) When a person subject to this Act is sentenced by a court-martial to transportation or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the regular Army, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(4) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

124. Place of trial.—Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

125. Choice between criminal court and court-martial.—When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

126. Power of criminal court to require delivery of offender.—(1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final.

127. Successive trials by a criminal court and court-martial.—(1) A person convicted or acquitted by a court-martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence, or on the same facts.

(2) If a person sentenced by a court-martial under this Act or punished under any of the sections 80, 83, 84 or 85 is afterwards tried and convicted by a criminal court for the same offence, or on the same facts, that court shall, in awarding punishment, have regard to the punishment he may already have undergone for the said offence.

CHAPTER XI

PROCEDURE OF COURTS-MARTIAL.

128. Presiding officer.—At every general, district or summary general court-martial the senior member shall be the presiding officer.

129. Judge Advocate.—Every general court-martial shall, and every district or summary general court martial may, be attended by a judge advocate, who

shall be either an officer belonging to the department of the Judge Advocate General, or if no such officer is available, an officer approved of by the Judge Advocate General or any of his deputies.

130. Challenges.—(1) At all trials by general, district or summary general court-martial, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

131. Oaths of member, judge advocate and witness.—(1) An oath or affirmation in the prescribed manner shall be administered to every member of every court-martial and to the judge advocate before the commencement of the trial.

(2) Every person giving evidence before a court-martial shall be examined after being " " duly sworn or affirmed in the prescribed form

(3) The provisions of sub-section (2) shall not apply where the witness is a child under twelve years of age and the court-martial is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation.

132. Voting by members.—(1) Subject to the provisions of sub-sections (2) and (3), every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused.

(2) No sentence of death shall be passed by a general court-martial without the concurrence of at least two-thirds of the members of the court.

(3) No sentence of death shall be passed by a summary general court-martial without the concurrence of all the members.

(4) In matters, other than a challenge or the finding or sentence, the presiding officer shall have a casting vote

133. General rule as to evidence.—The Indian Evidence Act, 1872 (I of 1872), shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

134. Judicial notice.—A court-martial may take judicial notice of any matter within the general military knowledge of the members.

135. Summoning witnesses.—(1) The convening officer, the presiding officer of a court-martial, the judge advocate or the commanding officer of the accused person may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to military authority, the summons shall be sent to his commanding officer, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

136. Documents exempted from production.—(1) Nothing in section 185 shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872 (I of 1872), or to apply to any letter, postcard, telegraph or other document in the custody of the postal or telegraph authorities.

(2) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate High Court or Court of Session, wanted for the purpose of any court-martial, such magistrate or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or Court may direct.

(3) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or High Court or Court of Session.

137. Commissions for examination of witnesses.—(1) Whenever, in the course of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

(2) The Judge Advocate General may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) The magistrate or officer to whom the commission is issued, or, if he is the district magistrate he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under the Code of Criminal Procedure, 1898 (Act V of 1898), or any corresponding law in force in a Part B State.

(4) When the witness resides in a tribal area or in any place outside India, the commission may be issued in the manner specified in Chapter XI of the Code of Criminal Procedure, 1898 (Act V of 1898), or of any corresponding law in force in a Part B State.

(5) In this and the next succeeding section, the expression "Judge Advocate General" includes a Deputy Judge Advocate General.

138. Examination of a witness on commission.—(1) The prosecutor and the accused person in any case in which a commission is issued under section 137

may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer executing the commission shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused person may appear before such magistrate or officer by counsel or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

(3) After a commission issued under section 187 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General.

(4) On receipt of a commission and deposition returned under sub-section (3), the Judge Advocate General shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(5) In every case in which a commission is issued under section 187, the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

139. Conviction of offence not charged.—(1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before a court-martial with using criminal force may be found guilty of assault.

(4) A person charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a court-martial with any one of the offences specified in clauses (a), (b), (c) and (d) of section 52 may be found guilty of any other of those offences with which he might have been charged.

(6) A person charged before a court-martial with an offence punishable under section 69 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), were applicable.

(7) A person charged before a court-martial with any offence under this Act, may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted or abetted the commission of that offence, although the attempt or abetment is not separately charged.

140. Presumption as to signatures.—In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government shall, on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

141. Enrolment paper.—(1) Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.

(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

142. Presumption as to certain documents.—(1) A letter, return or other document respecting the service of any person in, or the cashiering, dismissal or discharge of any person from, any portion of the regular Army, or respecting the circumstance of any person not having served in, or belonged to, any portion of the Forces, if purporting to be signed by or on behalf of the Central Government or the Commander-in-Chief, or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(2) An Army, Navy or Air Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers, junior commissioned officers or warrant officers therein mentioned, and of any appointment held by them and of the corps, battalion or arm or branch of the services to which they belong.

(3) Where a record is made in any regimental book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated.

(4) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of any officer or other person subject to this Act, or any portion of the regular Army, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the commanding officer of that portion of the regular Army, or by the commanding officer of the corps, department or detachment to which such person belongs, as the case may be, and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed, shall be evidence of the matters so stated.

(6) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.

143. Reference by accused to Government officer.—(1) If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such

officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial.

144. Evidence of previous convictions and general character.—(1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of any previous convictions of such person, either by a court-martial or by a criminal court, or any previous award of punishment under any of the sections 80, 83, 84 and 85, and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records, and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

145. Lunacy of accused.—(1) Whenever, in the course of a trial by a court-martial, it appears to the court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the court shall record a finding accordingly.

(2) The presiding officer of the court, or, in the case of a summary court-martial, the officer holding the trial, shall forthwith report the case to the confirming officer, or to the authority empowered to deal with its finding under section 162, as the case may be.

(3) The confirming officer to whom the case is reported under sub-section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was charged.

(4) The authority to whom the finding of a summary court-martial is reported under sub-section (2), and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.

(5) On receipt of a report under sub-section (4) the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

146. Subsequent fitness of lunatic accused for trial.—Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 145, the officer commanding the army, army corps, division or brigade within the area

of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may—

(a) if such person is in custody under sub-section (4) of section 145, on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained in a jail under sub-section (5) of section 145, on a certificate of the Inspector General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section on a certificate of any two or more of the visitors of such asylum that he is capable of making his defence,

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, if the offence is a civil offence, by a criminal court.

147. Transmission to Central Government of orders under section 148.—A copy of every order made by an officer under section 146 for the trial of the accused shall forthwith be sent to the Central Government.

148. Release of lunatic accused.—Where any person is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section—

(a) if such person is in custody under the said sub-section (4), on the report of a medical officer, or

(b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 146 that, in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person, the Central Government may order that such person be released or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

149. Delivery of lunatic accused to relatives.—Where any relative or friend of any person who is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section desires that he should be delivered to his care and custody, the Central Government may upon application by such relative or friend and on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of and prevented from doing injury to himself or any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

150. Order for custody and disposal of property pending trial.—When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

151. Order for disposal of property regarding which offence is committed.—

(1) After the conclusion of a trial before any court-martial, the court or the officer confirming the finding or sentence of such court-martial, or any authority superior to such officer, or, in the case of a court-martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any

offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), or any corresponding law in force in a Part B State.

(3) In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

152. Powers of court-martial in relation to proceedings under this Act.— Any trial by a court-martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and the court-martial shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

CHAPTER XII

CONFIRMATION AND REVISION

153. Finding and sentence not valid, unless confirmed.—No finding or sentence of a general, district or summary general, court-martial shall be valid except so far as it may be confirmed as provided by this Act.

154. Power to confirm finding and sentence of general court-martial.—The findings and sentences of general courts-martial may be confirmed by the Central Government, * * * * * or by any officer empowered in this behalf by warrant of the Central Government.

155. Power to confirm finding and sentence of district court-martial.—The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of such officer.

156. Limitation of powers of confirming authority.—A warrant issued under section 154 or section 155 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

157. Power to confirm finding and sentence of summary general court-martial.—The findings and sentences of summary general courts-martial may be confirmed by the convening officer or if he so directs, by an authority superior to him.

158. Power of confirming authority to mitigate, remit or commute sentences.—(1) Subject to such restrictions, reservations or conditions as may be contained in any warrant issued under section 154 or section 155 and to the provision of sub-section (2), a confirming authority may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 71.

(2) A sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

159. Confirming of findings and sentences on board a ship.—When any person subject to this Act is tried and sentenced by a court-martial while on board a ship, the finding and sentence so far as not confirmed and executed on board the ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

160. Revision of finding or sentence.—(1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or, if a summary general or district court-martial, of three officers.

161. Finding and sentence of a summary court-martial.—(1) Save as otherwise provided in sub-section (2), the finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith.

(2) If the officer holding the trial is of less than five years service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a brigade.

162. Transmission of proceedings of summary courts-martial.—The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the Commander-in-Chief, or any officer empowered in this behalf by the Commander-in-Chief, may, for reasons based on the merits of the case, but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

163. Alteration of finding or sentence in certain cases.—(1) Where a finding of guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 179 to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

Provided that no such substitution shall be made unless such finding could have been validly made by the court-martial on the charge and unless it appears that the court-martial must have been satisfied of the facts establishing the said offence.

(2) Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority referred to in sub-section (1) may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by, the sentence for which a new sentence is substituted under this section.

(4) Any finding substituted, or any sentence passed, under this section shall, for the purposes of this Act and the rules made thereunder, have effect as if it were a finding or sentence, as the case may be, of a court-martial.

164. Remedy against order, finding or sentence of court-martial.—(1) Any person subject to this Act who considers himself aggrieved by any order passed by any court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, the Commander-in-Chief or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Commander-in-Chief or other officer, as the case may be, may pass such order thereon as it or he thinks fit.

165. Annulment of proceedings.—The Central Government, the Commander-in-Chief or any prescribed officer may annul the proceedings of any court-martial on the ground that they are illegal or unjust.

CHAPTER XIII

EXECUTION OF SENTENCES

166. Form of sentence of death.—In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

167. Commencement of sentence of transportation or imprisonment.—Whenever any person is sentenced by a court-martial under this Act to transportation or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer or, in the case of a summary court-martial, by the court.

168. Execution of sentence of transportation.—Whenever any sentence of transportation is passed under this Act or whenever any sentence of death is commuted to transportation, the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

169. Execution of sentence of imprisonment.—(1) Whenever any sentence of imprisonment is passed under this Act by a court-martial or whenever any sentence of death or transportation is commuted to imprisonment, the confirming officer or in case of a summary court-martial the officer holding the court or such other officer as may be prescribed, shall, save as otherwise provided in sub-sections (3) and (4), direct either that the sentence shall be carried out by confinement in a military prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub-section (1) the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a court-martial, the appropriate officer under sub-section (1) may direct that the sentence shall be carried out by confinement in military custody instead of in a civil or military prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint.

170. Temporary custody of offender.—Where a sentence of transportation or imprisonment is directed to be undergone in a civil prison the offender may be kept in a military prison or in military custody or in any other fit place, till such time as it is possible to send him to a civil prison.

171. Execution of sentence of imprisonment in special cases.—Whenever, in the opinion of an officer commanding an army, army corps, division or independent brigade, any sentence or portion of a sentence of imprisonment cannot for special reasons, conveniently be carried out in a military prison or in military custody in accordance with the provisions of section 169 such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

172. Conveyance of prisoner from place to place.—A person under sentence of transportation or imprisonment may during his conveyance from place to place, or when on board ship, aircraft, or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

173. Communication of certain orders to prison officers.—Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil or military prison, a warrant in accordance with such order shall be forwarded by the officer making the order or his staff officer or such other person as may be prescribed to the officer in charge of the prison in which such person is confined.

174. Execution of sentence of fine.—When a sentence of fine is imposed by a court-martial under section 69 whether the trial was held within India or not, a copy of such sentence, signed and certified by the confirming officer, or where no confirmation is required, by the officer holding the trial may be sent to any magistrate in India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), or any corresponding law in force in a Part B State for the levy of fines as if it were a sentence of fine imposed by such magistrate.

175. Establishment and regulation of military prisons.—The Central Government may set apart any building or part of a building, or any place under its control, as a military prison for the confinement of persons sentenced to imprisonment under this Act.

176. Informality or error in the order or warrant.—Whenever any person is sentenced to transportation or imprisonment under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of any informality or

error in or as respects the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into or is confined in any such place, and any such order, warrant or document may be amended accordingly.

177. Power to make rules in respect of prisons and prisoners.—The Central Government may make rules providing—

- (a) for the government, management and regulation of military prisons;
- (b) for the appointment, removal and powers of inspectors, visitors, governors and officers thereof;
- (c) for the labour of prisoners undergoing confinement therein, and for enabling persons to earn, by special industry and good conduct, a remission of a portion of their sentence;
- (d) for the safe custody of prisoners and the maintenance of discipline among them and the punishment, by personal correction, restraint or otherwise, of offences committed by prisoners;
- (e) for the application to military prisons of any of the provisions of the Prisons Act, 1894 (IX of 1894), relating to the duties of officers of prisons and the punishment of persons not being prisoners;
- (f) for the admission into any prison, at proper times and subject to proper restrictions, of persons with whom prisoners may desire to communicate, and for the consultation by prisoners under trial with their legal advisers without the presence as far as possible of any third party within hearing distance.

178. Restriction of rule-making power in regard to corporal punishment.—Rules made under section 177 shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment more severe than it is under the law for the time being in force relating to civil prisons.

CHAPTER XIV

PARDONS, REMISSESS AND SUSPENSIONS

179. Pardon and remission.—When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government or the Commander-in-Chief or, in the case of a sentence, which he could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division or independent brigade in which such person at the time of conviction was serving, or the prescribed officer may—

- (a) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or
- (b) mitigate the punishment awarded;
- (c) commute such punishment for any less punishment or punishments mentioned in this Act;
- Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court; or
- (d) either with or without conditions which the person sentenced accepts, release the person on parole.

180. Cancellation of conditional pardon, release on parole or remission.—

(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of transportation or imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

181. Reduction of warrant officer or non-commissioned officer.—When under the provisions of section 77 a warrant officer or a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purpose of section 179, be treated as a punishment awarded by a sentence of a court-martial.

182. Suspension of sentence of transportation or imprisonment.—(1) Where a person subject to this Act is sentenced by a court-martial to transportation or imprisonment, the Central Government, the Commander-in-Chief or any officer empowered to convene a general or a summary general court-martial may suspend the sentence whether or not the offender has already been committed to prison or to military custody.

(2) The authority or officer specified in sub-section (1) may in the case of an offender so sentenced direct that, until the orders of such authority or officer have been obtained the offender shall not be committed to prison or to military custody.

(3) The powers conferred by sub-sections (1) and (2) may be exercised in the case of any such sentence which has been confirmed, reduced or commuted.

183. Orders pending suspension.—(1) Where the sentence referred to in section 182 is imposed by a court-martial other than a summary court-martial, the confirming officer may, when confirming the sentence, direct that the offender be not committed to prison or to military custody until the orders of the authority or officer specified in section 182 have been obtained.

(2) Where a sentence of imprisonment is imposed by a summary court-martial, the officer holding the trial or the officer authorised to approve of the sentence under sub-section (2) of section 161 may make the direction referred to in sub-section (1).

184. Release on suspension.—Where a sentence is suspended under section 182, the offender shall forthwith be released from custody.

185. Computation of period of suspension.—Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence.

186. Order after suspension.—The authority or officer specified in section 182 may at any time while a sentence is suspended, order—

(a) that the offender be committed to undergo the unexpired portion of the sentence, or

(b) that the sentence be remitted.

187. Reconsideration of case after suspension.—(1) Where a sentence has been suspended, the case may at any time, and shall at intervals of not more than four months, be reconsidered by the authority or officer specified in section 182, or by any general or other officer not below the rank of field officer duly authorised by the authority or officer specified in section 182.

(2) Where on such reconsideration by the officer so authorised it appears to him that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified in section 182.

188. Fresh sentence after suspension.—Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then—

(a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently;

(b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed to prison or military custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently; and

(c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 186 or section 187, continue to be suspended.

189. Scope of power of suspension.—The powers conferred by sections 182 and 186 shall be in addition to and not in derogation of the power of mitigation, remission and commutation.

190. Effect of suspension and remission on dismissal.—(1) Where in addition to any other sentence the punishment of dismissal has been awarded by a court-martial, and such other sentence is suspended under section 182, then, such dismissal shall not take effect until so ordered by the authority or officer specified in section 182.

(2) If such other sentence is remitted under section 186, the punishment of dismissal shall also be remitted.

CHAPTER XV

RULES

191. Power to make rules.—(1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the rules made thereunder may provide for—

(a) the removal, retirement, release or discharge from the service of persons subject to this Act;

(b) the amount and incidence of fines to be imposed under section 89;

(c) the specification of the punishments which may be awarded as field punishments under sections 75 and 80;

(d) the assembly and procedure of courts of inquiry, the recording of summaries of evidence and the administration of oaths or affirmations by such courts;

(e) the convening and constituting of courts-martial and the appointment of prosecutors at trials by courts-martial;

(f) the adjournment, dissolution and sitting of courts-martial;

(g) the procedure to be observed in trials by courts-martial and the appearance of legal practitioners thereat;

(h) the confirmation, revision and annulment of, and petitions against, the findings and sentences of courts-martial;

- (i) the carrying into effect of sentences of courts-martial;
- (j) the forms of orders to be made under the provisions of this Act relating to courts-martial, transportation and imprisonment;
- (k) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 99, and the due carrying out of such decisions;
- (l) the relative rank of the officers, junior commissioned officers, warrant officers, petty officers and non-commissioned officers of the regular Army, Navy and Air Force when acting together;
- (m) any other matter directed by this Act to be prescribed.

192. Power to make regulations.—The Central Government may make regulations for all or any of the purposes of this Act other than those specified in section 191.

193. Publication of rules and regulations in Gazette.—All rules and regulations made under this Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

194. Repeals.—The Acts and Ordinances mentioned in the Schedule are hereby repealed.

CHAPTER XVI

TRANSITORY PROVISIONS

195. Definition of "British officer".—(1) In this Chapter "British officer" means a person of non-Indian domicile holding a commission in His Majesty's Land Forces or in the Royal Marines or in the Territorial Army and serving in the regular Army.

(2) The expression "superior officer" in this Act shall be deemed to include a British officer.

196. Powers of British officer.—A British officer shall have all the powers conferred by this Act on an officer of corresponding rank or holding a corresponding appointment.

THE SCHEDULE

(See section 194)

Year	No.	Short title	Extent of repeal
1911	VIII	The Indian Army Act, 1911.	The whole, except Chapter XII.
1920	XX	The Indian Army (Suspension of Sentences) Act, 1920.	The whole.
1941	X	The Active Service Ordinance, 1941.	The whole.
1943	XXXVI	The Prisoners of War (Forfeiture of Emoluments) Ordinance, 1943.	The whole.
1946	XIV	The Active Service (amendment) Ordinance, 1946.	The whole.

The following Report of the Select Committee on the Bill to consolidate and amend the law relating to the government of the Air Force, was presented to Parliament on the 21st March, 1950:—

We, the undersigned, members of the Select Committee to which the Bill to consolidate and amend the law relating to the government of the Air Force was referred, have considered the Bill and have now the honour to submit this our Report with the Bill as amended by us annexed thereto.

Upon the changes proposed by us which are not formal or consequential, we note as follows.

Clause 4.—We have inserted definitions of "Chief Legal Adviser" and "civil prison" and have at the same time revised the definitions of "non-commissioned officer" and "officer", from a drafting point of view and also in the light of the altered conditions now prevailing

Clause 5.—In sub-clause (1) we have provided for the application of the Air Force Act, with or without modifications, to any force raised and maintained in India.

Clause 12 is new and incorporates the relevant provisions contained in the Armed Forces (Miscellaneous Provisions) Ordinance, 1950 (VIII of 1950). In our opinion this is a desirable restriction which should be imposed by law in exercise of the powers given to Parliament by article 33 of the Constitution.

Clause 17 is omitted, as it has now become unnecessary, and the earlier clauses have been renumbered.

Clauses 19 and 20.—In our opinion the exercise of powers of dismissal, removal, etc. should be subject to the Act and the rules and regulations made thereunder.

Clause 21.—This clause has been revised in the light of the relevant provisions contained in the Armed Forces (Miscellaneous Provisions) Ordinance, 1950.

Clause 26.—We think that the Central Government should have the power to revise any decision by the Commander-in-Chief, and we have revised sub-clause (5) accordingly.

Clause 40.—We think that using insubordinate language is not so serious an offence as using threatening language and, therefore, we have reduced the relevant punishment.

Clause 43.—This is a drafting change.

Clause 52.—In our opinion a sentence of ten years imprisonment is adequate in respect of offences relating to property.

Clause 53.—We think that the punishment for extortion or corruption should be enhanced from seven years to ten years.

Clause 54.—Making away with arms and ammunitions etc. is a serious offence for which the penalty should be enhanced from seven years' imprisonment to ten years.

Clause 55.—This clause has been revised so that offences are catalogued together and punishments regulated separately depending upon whether the offence is wilful or otherwise.

Clause 58.—We think fraudulent intention should be a necessary ingredient in respect of an offence under sub-clause (a).

Clause 103.—Sub-clause (4) which was vague has now been recast in the light of relevant provision in the Armed Forces (Miscellaneous Provisions) Ordinance, 1950.

Clause 108.—We have inserted a proviso declaring that no officer may be arrested or detained otherwise than on the order of another officer.

Clause 127.—We have altered the word "president" to "presiding officer" as, in our opinion, we should avoid, wherever possible, the use of the word "President" in relation to any person other than the President of the Union.

Clause 161.—We are told that until a finding or sentence is confirmed no copy thereof is furnished to the accused person and, therefore, to give him a right to petition a higher authority before confirmation of the finding or sentence, as this clause sought to do, would appear to be meaningless. We have, therefore, re drafted this clause dealing with petitions before and after confirmation, separately.

Clauses 175 and 189.—The changes follow the lines of similar amendments in the Army Bill.

2. The Bill was published in Part V of the *Gazette of India*, dated the 31st December, 1949.

3. We think that the Bill has not been so altered as to require circulation under the rules, and we recommend that it be passed as now amended.

B. R. AMBEDKAR.

BALDEV SINGH.

SITA RAM S. JAJOO

H. G. MUDGAL.

M. V. RAMA RAO.

P. RUNHIRAMAN.

V KODANDARAMA REDDI.

SATIS CHANDRA SAMANTA

M. L. GAUTAM.

LAL SINGH.

ARI BAHADUR GURUNG.

MIHIR LAL CHATTOPADHYAYA

*THAKUR DAS BHARGAVA.

JOACHIM ALVA.

**R. K. SIDHVA.

BISWANATH DAS.

JASPATROY KAPOOR.

MATHURA PRASAD MISHRA.

NEW DELHI;
The 21st March, 1950.

* Subject to a Note.

** Subject to a Minute of Disent.

NOTE

I am sorry to observe that some of the meetings of the Select Committee were held at such time that owing to my being busy with other important Committees for which I had received intimation earlier, I was precluded from attending them. I reserve my right, therefore, to move amendments to such provisions of the Bill when it comes for consideration as I do not approve.

THAKUR DAS BHARGAVA.

NEW DELHI;
The 21st March, 1950.

MINUTE OF DISSENT

The designation of the "Judge Advocate General" is confusing. In India, we understood that in the Court Martial the Judge Advocate General was the prosecuting authority on behalf of State. During our discussions in the Select Committee, however, we were told that the Judge Advocate General performs two duties *viz.*, that of an advocate and a judge; the Court Martial have to give their decision at the behest of the Judge Advocate General. If the Court Martial which comprises of 3 judges differ from the direction of the Judge Advocate General then the latter's opinion prevails or a fresh Court Martial is instituted. The question of change of designation of the Judge Advocate General which has been used by the British Government was a question of inquiry there. I find from the report of Army and Air Force, Court Martial Committee appointed by the Parliament in 1948 in which the Committee has made recommendations that the designation of the Judge Advocate General be changed. They state "The Title 'Judge Advocate' with his suggestions of completely opposite functions being performed by the same individual is curious and misleading". They go on further to state, "That the title of Judge Advocate General be changed. As we have pointed out in paragraph 30 above, this title is misleading as tending to suggest that the holder of the office is both an advocate and a judge. If our proposals are accepted the functions of the Judge Advocate General and his staff will be exclusively judicial and advisory, and we think in future he should be known as the 'Chief Judge Martial', a title which will indicate the judicial character of the office as well as its association with the Services."

This recommendation, which is not only worth consideration but acceptance, Parliament may have accepted or not accepted, but I think in our country when we are now amending the entire Army and Air Force Act, we should not necessarily follow the procedure prevalent in Great Britain which has also found it necessary to make suggestions for its amendment. It is necessary that to avoid any kind of confusion, this title should be changed and the Advocate General designation be defined either as stated by the Parliamentary Committee of Great Britain or some other appropriate name. This is only my objection in the whole Bill.

R. K. SIDHVA.

NEW DELHI;
The 21st March, 1950.

A. BILL No. 85 OF 1949.

[AS AMENDED BY THE SELECT COMMITTEE]

(Words *sidelined* or *underlined* indicate the amendments suggested by the Committee; asterisks indicate omissions)

BILL

to consolidate and amend the law relating to the government of the Air Force

* * * * *

Be it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Air Force Act, 1950.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. Persons subject to this Act.—The following persons shall be subject to this Act wherever they may be, namely:—

(a) officers and warrant officers of the Air Force;

(b) persons enrolled under this Act;

(c) persons belonging to the Indian Air Force Volunteer Reserve in the circumstances specified in section 3 of the Indian Air Force Volunteer Reserve (Discipline) Act, 1939 (XXXVI of 1939);

(d) persons not otherwise subject to air force law, who, on active service, in camp, on the march, or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of the Air Force.

3. Termination of application of the Act.—Every person subject to this Act under clauses (a) to (c) of section 2 shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.**4. Definitions.**—In this Act, unless the context otherwise requires,—

(i) “active service”, as applied to a person subject to this Act, means the time during which such person—

(a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or

(b) is engaged in air force operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or

(c) is attached to, or forms part of, a force which is in military occupation of any foreign country;

(ii) “aircraft” includes aeroplanes, balloons, kite balloons, airships, gliders or other machines for flying;

(iii) “aircraft material” includes any engines, fittings, guns, gear, instruments or apparatus for use in connection with aircraft, and any of its

components and accessories and petrol oil, and any other substance used for providing motive power for planes:

(iv) "Air Force" means officers and airmen who by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term air force service to the Union in every part of the world or any specified part of the world, including persons belonging to the Indian Air Force Volunteer Reserve when called out on permanent service;

(v) "air force custody" means the arrest or confinement of a person according to the usages of the service and includes military or naval custody;

(vi) "air force law" means the law enacted by this Act and the rules made thereunder and includes the usages of the service;

(vii) "air force reward" includes any gratuity or annuity for long service or good conduct, badge pay or pension, and any other air force pecuniary reward;

(viii) "airman" means any person subject to this Act other than an officer;

(ix) "air officer" means any officer of the Air Force above the rank of group captain;

(x) "air signal" means any signal intended for the guidance of aircraft, whether given by flag, ground signal, light, wind indicator or in any manner whatsoever;

(xi) "Chief Legal Adviser" means a person appointed as such by the Commander-in-Chief to give advice on matters relating to air force law and to perform such other duties of a legal character as may arise in connection therewith;

(xii) "civil offence" means an offence which is triable by a criminal court;

(xiii) "civil prison" means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894 (IX of 1894) or under any other law for the time being in force;

(xiv) "Commander-in-Chief" means the officer commanding-in-chief of the Air Force;

(xv) "commanding officer" used in relation to a person subject to this Act, means the officer for the time being in command of the unit or detachment to which such person belongs or is attached;

(xvi) "court-martial" means a court-martial held under this Act;

(xvii) "criminal court" means a court of ordinary criminal justice in any part of India, other than the State of Jammu and Kashmir;

(xviii) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to air force law to act;

(xix) "the Forces" means the regular Army, Navy and Air Force or any part of any one or more of them.

(xx) "non-commissioned officer" means a person holding a non-commissioned rank or an acting non-commissioned rank in the Air Force, and

includes any person holding a non-commissioned rank or an acting non-commissioned rank in the Indian Air Force Volunteer Reserve who is subject to this Act;

(xxi) "notification" means a notification published in the Official Gazette;

(xxii) "offence" means any act or omission punishable under this Act, and includes a civil offence, as hereinbefore defined;

(xxiii) "officer" means a person commissioned, gazetted or in pay as an officer in the Air Force, and includes—

* * * * *

(a) an officer of the Indian Air Force Volunteer Reserve who is for the time being subject to this Act;

(b) in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the regular Army or the Navy;

but does not include a junior commissioned officer, warrant officer, petty officer or non-commissioned officer;

(xxiv) "prescribed" means prescribed by rules made under this Act;

(xxv) "provost-marshal" means a person appointed as such under section 108 and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf;

(xxvi) "regulation" includes a regulation made under this Act;

(xxvii) "superior officer", when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer, and as regards persons serving under such conditions as may be prescribed, an officer, junior commissioned officer, warrant officer, petty officer and non-commissioned officer of the regular Army or the Navy;

(xxviii) "unit" includes—

(a) any body of officers and airmen for which a separate authorised establishment exists;

(b) any separate body of persons subject to this Act employed on any service and not attached to a unit as aforesaid;

(c) any other separate body of persons composed wholly or partly of persons subject to this Act, and specified as a unit by the Central Government;

(xxix) "warrant officer" means a person appointed, gazetted or in pay as a warrant officer of the Air Force and includes an acting warrant officer, a master warrant officer, and a warrant officer of the Indian Air Force Volunteer Reserve who is for the time being subject to this Act;

(xxx) all words and expressions used herein and defined in the Indian Penal Code (Act XLV of 1860) and not hereinbefore defined, shall be deemed to have the meanings respectively assigned to them by that Code.

CHAPTER II

SPECIAL PROVISIONS FOR THE APPLICATION OF ACT IN CERTAIN CASES

5. Application of Act to certain forces under the Central Government.—(1) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in

India * * * * and suspend the operation of any other enactment for the time being applicable to the said force.

(2) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the Air Force the same or equivalent rank as the aforesaid persons hold for the time being in the said force.

(3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by, or are in the service of, or are followers of, or accompany any portion of the said force as they have effect in respect of persons subject to this Act under clause (d) of section 2.

(4) While any of the provisions of this Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

6. Special provision as to rank in certain cases.—(1) The Central Government may, by notification, direct that any persons or class of persons subject to this Act under clause (d) of section 2, shall be so subject as officers, warrant officers or non-commissioned officers, and may authorise any officer to give a like direction and to cancel such direction.

(2) All persons subject to this Act other than officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

7. Commanding officer of persons subject to air force law under clause (d) of section 2.—(1) Every person subject to this Act, under clause (d) of section 2, shall, for the purposes of this Act, be deemed to be under the commanding officer of the unit, or detachment, if any, to which he is attached, and if he is not so attached under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force.

(2) An officer commanding a force shall not place a person subject to this Act under clause (d) of section 2 under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

8. Officers exercising powers in certain cases.—(1) Whenever persons subject to this Act are serving under an officer commanding any air force formation not in this section specifically named, and being, in the opinion of the Central Government, not less than a squadron, the said Government may prescribe the officer by whom the powers which, under this Act, may be exercised by air officers in charge of commands, and officers commanding groups, wings and squadrons shall, as regards such persons, be exercised.

(2) The Central Government may confer such powers either absolutely, or subject to such restrictions, reservations, exceptions and conditions as it may think fit.

9. Power to declare persons to be on active service.—Notwithstanding anything contained in clause (i) of section 4, the Central Government may, by notification, declare that any person or class of persons subject to this Act shall with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, be deemed to be on active service within the meaning of this Act.

CHAPTER III

COMMISSION, APPOINTMENT AND ENROLMENT

10. Commission and appointment.—The President may grant to such person as he thinks fit, a commission as an officer or appoint any person as a warrant officer of the Air Force.

11. Ineligibility of aliens for enrolment.—No person who is not a citizen of India shall, except with the consent of the Central Government signified in writing, be enrolled in the Air Force:

Provided that nothing contained in this section shall bar the enrolment of the subjects of Nepal in the Air Force.

12. Ineligibility of females for enrolment or employment.—No female shall be eligible for enrolment or employment in the Air Force, except in such corps, department, branch or other body forming part of, or attached to any portion of, the Air Force as the Central Government may, by notification, specify in this behalf.

Provided that nothing contained in this section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxiliary to the Air Force or any branch thereof in which females are eligible for enrolment or employment.

13. Procedure before enrolling officer.—Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

14. Mode of enrolment.—If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment, he shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled.

15. Validity of enrolment.—Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any unit shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever; and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim, affect his position as an enrolled person under this Act or invalidate any proceedings, act or thing taken or done prior to his discharge.

16. Persons to be attested.—The following persons shall be attested, namely:—

(a) all persons enrolled as combatants;

(b) all persons selected to hold a non-commissioned or acting non-commissioned rank; and

(c) all other persons subject to this Act as may be prescribed by the Central Government.

17. Mode of attestation.—(1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmative shall be administered to him in the prescribed form by his commanding officer in front of his unit or such portion thereof as may be present, or by any other prescribed person.

— (2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will bear true allegiance to the Constitution of India as by law established, and that he will serve in the Air Force and go wherever he is ordered by land, sea or air, and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

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CHAPTER IV

CONDITIONS OF SERVICE

18. Tenure of service under the Act.—Every person subject to this Act shall hold office during the pleasure of the President.

19. Termination of service by Central Government.—Subject to the provisions of this Act and the rules and regulations made thereunder, the Central Government may dismiss, or remove from the service any person subject to this Act.

20. Dismissal, removal or reduction by Commander-in-Chief and other officers.—(1) The Commander-in-Chief may dismiss or remove from the service any person subject to this Act other than an officer.

(2) The Commander-in-Chief may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.

(3) An officer having power not less than an air officer in charge of a command or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a warrant officer.

(4) On active service, an officer commanding the air forces in the field may reduce to a lower rank or to the ranks any warrant officer or non-commissioned officer under his command.

(5) The Commander-in-Chief or an officer specified in sub-section (3) may reduce to a lower class in the ranks any airman other than a warrant officer or non-commissioned officer.

(6) The commanding officer of an acting non-commissioned officer may order him to revert to his substantive rank as a non-commissioned officer, or if he has no such substantive rank, to the ranks.

(7) The exercise of any powers under this section shall be subject to the other provisions contained in this Act and the rules and regulations made thereunder.

21. Power to modify certain fundamental rights in their application to persons subject to this Act.—Subject to the provisions of any law for the time being in force relating to the Air Force or to any branch thereof, the Central Government may, by notification, make rules restricting in such manner and to such extent as may be specified the right of any person subject to this Act—

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations;

(b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;

(c) to communicate with the press or to publish or cause to be published any book, letter or other document.

22. Retirement, release or discharge.—Any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed.

23. Certificate on termination of service.—Every warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding officer with a certificate, in the language which is the mother tongue of such person and also in the English language setting forth—

(a) the authority terminating his service;

(b) the cause for such termination; and

(c) the full period of his service in the Air Force.

24. Discharge or dismissal when out of India.—(1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

(3) Where any such person as is mentioned in sub-section (2) is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of transportation, imprisonment or detention, a portion of such sentence, may be inflicted before he is sent to India.

(4) For the purposes of this section, the word "discharge" shall include release, and the word "dismissal" shall include removal.

CHAPTER V

SERVICE PRIVILEGES

25. Authorised deductions only to be made from pay.—The pay of every person subject to this Act due to him as such under any regulation, for the time being in force, shall be paid without any deduction other than the deductions authorised by or under this or any other Act.

26. Remedy of aggrieved airmen.—(1) Any airman who deems himself wronged by any superior or other officer may, if not attached to a unit or detachment, complain to the officer under whose command or orders he is serving; and may, if attached to a unit or detachment, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved airman may complain to such officer's next superior officer, and if he thinks himself wronged by such superior officer, he may complain to the Commander-in-Chief.

(3) Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant; or, when necessary, refer the complaint to superior authority.

(4) Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority.

(5) The Central Government may revise any decision by the Commander-in-Chief under sub-section (2), but subject thereto, the decision of the Commander-in-Chief shall be final.

27. Remedy of aggrieved officers.—Any officer who deems himself wronged by his commanding officer or any superior officer and who on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complain to the Central Government in such manner as may from time to time be specified by proper authority.

28. Immunity from attachment.—The arms, clothes, equipment, accoutrements or necessaries of any person subject to this Act shall not be seized, and the pay and allowances of any such person or any part thereof shall not be attached, by direction of any civil or revenue court or any revenue officer, in satisfaction of any decree or order enforceable against him.

29. Immunity from arrest for debt.—(1) No person subject to this Act shall, so long as he belongs to the Forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue officer.

(2) The judge of any such court or the said officer may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no court-fee shall be payable by the complainant.

30. Immunity of persons attending courts-martial from arrest.—(1) No presiding officer or member of a court-martial, no judge advocate, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial shall, while proceeding to, attending, or returning from, a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

31. Privileges of reservists.—Every person belonging to the Air Force Reserve shall, when called out for, or engaged in, or returning from, training or service be entitled to all the privileges accorded by sections 28 and 29 to a person subject to this Act.

32. Priority in respect of Air Force personnel's litigation.—(1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate, from the proper air force authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper air force authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or of any application by or on behalf of any such person, for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for its inability to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper air force authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to an officer having power not less than a group commander or equivalent commander whose decision shall be final.

33. Saving of rights and privileges under other laws.—The rights and privileges specified in the preceding sections of this Chapter shall be in addition to any others conferred on persons subject to this Act or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

CHAPTER VI

OFFENCES

34. Offences in relation to the enemy and punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit the said act; or

(b) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or

(c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or

(d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or

(e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or

(f) treacherously or through cowardice sends a flag of truce to the enemy; or

(g) in time of war or during any air force operation, intentionally occasions a false alarm in action, camp, or quarters, or spreads reports calculated to create alarm or despondency; or

(h) in time of action leaves his commanding officer or his post, guard, piquet, patrol or party without being regularly relieved or without leave; or

(i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or

(j) knowingly harbours or protects an enemy not being a prisoner; or

(k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or

(l) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces; or

(m) treacherously or shamefully causes the capture or destruction by the enemy of any aircraft belonging to the Forces; or

(n) treacherously uses any false air signal or alters or interferes with any air signal; or

(o) when ordered by his superior officer or otherwise under orders to carry out any air force operations, treacherously or shamefully fails to use his utmost exertions to carry such orders into effect;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

35. Offences in relation to the enemy and not punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner, fails to rejoin his service when able to do so; or

(b) without due authority holds correspondence with or communicates intelligence to the enemy; or having come by the knowledge of any such correspondence or communication wilfully omits to discover it immediately to his commanding or other superior officer; or

(c) without due authority sends a flag of truce to the enemy; or

(d) negligently causes the capture or destruction by the enemy of any aircraft belonging to the Government; or

(e) when ordered by his superior officer, or otherwise under orders to carry out any warlike operations in the air, negligently or through other default fails to use his utmost exertions to carry such orders into effect;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

36. Offences punishable more severely on active service than at other times.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) forces a safeguard, or forces or uses criminal force to a sentry; or

(b) breaks into any house or other place in search of plunder; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, piquet, patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp or quarters; or spreads reports calculated to create unnecessary alarm or despondency; or

(f) makes known the parole, watchword or countersign to any person not entitled to receive it, or knowingly gives a parole, watchword or countersign different from what he received; or

(g) without due authority alters or interferes with any air signal; shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

37. Mutiny.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) begins, incites, causes, or conspires with any other persons to commit any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny or any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

38. Desertion and aiding desertion.—(1) Any person subject to this Act who deserts or attempts to desert the service shall on conviction by court-martial,

if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and

if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

39. Absence without leave.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) absents himself without leave; or

(b) without sufficient cause overstays leave granted to him; or

(c) being on leave of absence and having received information from proper authority that any unit or detachment, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or

(d) without sufficient cause fails to appear at the time fixed, at the parade or place appointed for exercise or duty; or

(e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or

(f) when in camp or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or

(g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

40. Striking or threatening superior officer.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) uses criminal force to, or assaults his superior officer; or

(b) uses threatening * * * language to such officer;

(c) uses insubordinate language to such officer shall, on conviction by court-martial,

if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an officer specified in clause (c), the imprisonment shall not exceed five years.

41. Disobedience to superior officer.—(1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally; or in writing or by signal or otherwise shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall, on conviction by court-martial,

if he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits such offence when not on active service, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

42. Insubordination and obstruction.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being concerned in any quarrel, affray, or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or
- (b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or
- (c) resists an escort whose duty it is to apprehend him or to have him in charge; or
- (d) breaks out of barracks, camp or quarters; or
- (e) neglects to obey any general, local or other order; or
- (f) impedes the provost-marshall or any person lawfully acting on his behalf or, when called upon, refuses to assist in the execution of his duty a provost-marshall or any person lawfully acting on his behalf; or
- (g) uses criminal force to or assaults any person bringing provisions or supplies to the Forces;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses (d) and (e) to two years, and in the case of the offences specified in the other clauses to ten years, or such less punishment as is in this Act mentioned.

43. Fraudulent enrolment.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) without having obtained a regular discharge from the Air Force or otherwise fulfilled the conditions enabling him to enrol or enter, enrolls himself in, or enters the said force or any part of the military or the naval forces of India; or
- (b) is concerned in the enrolment in any part of the Forces, of any person when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer which may extend to five years or such less punishment as is in this Act mentioned.

44. False answers on enrolment.—Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

45. Unbecoming conduct.—Any officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and if he is a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.

46. Certain forms of disgraceful conduct.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

(c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

47. Ill-treating a subordinate.—Any officer, warrant officer or non-commissioned officer, who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

48. Intoxication.—(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and if he is not an officer, be liable, subject to the provisions of sub-section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

49. Permitting escape of person in custody.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when in command of a guard, piquet, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse, any person committed to his charge or refuses to receive any prisoner or person so committed; or

(b) wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has not acted wilfully, to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

50. Irregularity in connection with arrest or confinement.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or

(b) having committed a person to air force custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty-eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

51. Escape from custody.—Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

52. Offences in respect of property.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law; or
- (b) dishonestly misappropriates or converts to his own use any such property; or
- (c) commits criminal breach of trust in respect of any such property; or
- (d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b), and (c) has been committed, knowing or having reason to believe the commission of such offence; or
- (e) wilfully destroys or injures any property of the Government entrusted to him; or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

53. Extortion and corruption.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) commits extortion; or
- (b) without proper authority exacts from any person money, provisions or service;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

54. Making away with equipment.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him, or
- (b) loses by neglect anything mentioned in clause (a); or
- (c) sells, pawns, destroys or defaces any medal or decoration granted to him;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clause (a) to ten years, and in the case of the offences specified in the other clauses to five years, or such less punishment as is in this Act mentioned.

55. Injury to property.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) * * destroys or injures any property mentioned in clause (a) of section 54, or any property belonging to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or serving with, or attached to, the Air Force; or
- (b) commits any act * * * * * which causes damage to, or destruction of, any property of the Government by fire; or

(c) * * * * kills, injures, makes away with, ill-treats or loses any animal entrusted to him;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has acted without reasonable excuse to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

56. False accusation.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false; or

(b) in making a complaint under section 26 or section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false, or knowingly and wilfully suppresses any material facts;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

57. Falsifying official documents and false declaration.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes any mark with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

58. Signing in blank and failure to report.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when signing any document relating to pay, arms, ammunition, equipment, clothing, supplies or stores, or any property of the Government fraudulently leaves in blank any initial part for such document's nature is a voucher, or

(b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

59. Offences relating to courts-martial.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being duly summoned or ordered to attend as a witness before a court-martial, wilfully or without reasonable excuse, makes default in attending; or
- (b) refuses to take an oath or make an affirmation legally required by a court-martial to be taken or made; or
- (c) refuses to produce or deliver any document in his power or control legally required by a court-martial to be produced or delivered by him; or
- (d) refuses when a witness to answer any question which he is by law bound to answer; or
- (e) is guilty of contempt of court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

60. False evidence.—Any person subject to this Act who, having been duly sworn or affirmed before any court-martial or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

61. Unlawful detention of pay.—Any officer, warrant officer or non commissioned officer who, having received the pay of a person subject to this Act unlawfully detains or refuses to pay the same when due, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

62. Offences in relation to aircraft and flying.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) wilfully or without reasonable excuse damages, destroys or loses any aircraft or aircraft material belonging to the Government; or
- (b) is guilty of any act or neglect likely to cause such damage, destruction or loss; or
- (c) without lawful authority disposes of any aircraft or aircraft material belonging to the Government; or
- (d) is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person; or
- (e) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration, by or under the authority of a neutral State, or the destruction in a neutral State, of any aircraft belonging to the Government;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned, and, in any other case, to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

63. Other offences relating to aircraft and flying.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) signs any certificate in relation to an aircraft or aircraft material belonging to the Government without ensuring the accuracy thereon; or

(b) being the pilot of an aircraft belonging to the Government, flies it at a height less than such height as may be specified by the Commander-in-Chief, except while taking off or landing, or in such other circumstances as may be specified by the Commander-in-Chief; or

(c) being the pilot of an aircraft belonging to the Government, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

64. Disobedience of lawful command of captain of aircraft.—Any person subject to this Act who, whatever his rank, commits any of the following offences, that is to say,—

(a) while he is in an aircraft disobeys any lawful command given by the captain of the aircraft, whether such captain is subject to this Act or not, as respects all matters relating to the flying or handling of the aircraft, or affecting the safety thereof; or

(b) being the captain of a glider aircraft towed by another aircraft disobeys any lawful command given by the captain of the towing aircraft, whether the latter is subject to this Act or not, as respects all matters aforesaid;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

65. Violation of good order and air force discipline.—Any person subject to this Act who is guilty of any act or omission which though not specified in this Act, is prejudicial to good order and air force discipline shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

66. Miscellaneous offences.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(b) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or

(d) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a rifle, sword or other offensive weapon; or

(e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or

(f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving:

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

67. Attempt.—Any person subject to this Act who attempts to commit any of the offences specified in sections 84 to 86, and in such attempt does any act towards the commission of the offence shall, on conviction by court-martial, where no express provision is made by this Act for the punishment of such attempt be liable,

if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

68. Abetment of offences that have been committed.—Any person subject to this Act who abets the commission of any of the offences specified in sections 84 to 86 shall, on conviction by court-martial, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

69. Abetment of offences punishable with death and not committed.—Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

70. Abetment of offences punishable with imprisonment and not committed.—Any person subject to this Act who abets the commission of any of the offences specified in sections 84 to 86 and punishable with imprisonment shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

71. Civil offences.—Subject to the provisions of section 72, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith

under this section shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,—

(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and

(b) in any other case, he shall be liable to suffer any punishment other than whipping, assigned for the offence by any law in force in India, or imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

72. Civil offences not triable by court-martial.—A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial, unless he commits any of the said offences—

(a) while on active service, or

(b) at any place outside India, or

(c) at a frontier post specified by the said Government by notification in this behalf.

Explanation—In this section and in section 71, “India” does not include the State of Jammu and Kashmir.

CHAPTER VII

PUNISHMENTS

73. Punishments awardable by courts-martial.—Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by courts-martial according to the scale following, that is to say,—

(a) death;

(b) transportation for life or for any period not less than seven years, in respect of civil offences;

(c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;

(d) detention for a term not exceeding two years in the case of airmen;

(e) cashiering, in the case of officers;

(f) dismissal from service;

(g) reduction to the ranks or to a lower rank or classification in the case of warrant officers and non-commissioned officers.

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as an airman,

(h) forfeiture of seniority of rank, in the case of officers, warrant officers and non-commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;

(i) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(j) severe reprimand or a privation, in the case of officers, warrant officers and non-commissioned officers;

(k) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;

(l) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal,

(m) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

74. Alternative punishments awardable by court-martial.—Subject to the provisions of this Act, a court-martial may, on convicting a person subject to this Act of any of the offences specified in sections 34 to 70, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 73, regard being had to the nature and degree of the offence.

75. Combination of punishments.—A sentence of a court-martial may award in addition to, or without any one other punishment, the punishment specified in clause (e) or clause (f) of section 73 and any one or more of the punishments specified in clauses (g) to (m) of that section.

76. Cashiering of officers.—An officer shall be sentenced to be cashiered before he is awarded any of the punishments specified in clauses (a) to (c) of section 73.

77. Field punishment.—(1) Where any person subject to this Act and under the rank of warrant officer commits any offence on active service, it shall be lawful for a court-martial to award for that offence any such punishment as is prescribed as a field punishment.

(2) Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb and shall not include flogging.

78. Position of field punishment in scale of punishments.—Field punishment shall for the purpose of commutation be deemed to stand next below dismissal in the scale of punishments specified in section 73.

79. Result of certain punishments in the case of a warrant officer or non-commissioned officer.—A warrant officer or a non-commissioned officer sentenced by a court-martial to transportation, imprisonment, detention, field punishment or dismissal from the service shall be deemed to be reduced to the ranks.

80. Retention in the ranks of a person convicted on active service.—When, on active service, any enrolled person has been sentenced by a court-martial to dismissal, or to transportation, imprisonment or detention, whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks and such service shall be reckoned as part of his term of transportation, imprisonment or detention, if any.

81. Punishments otherwise than by court-martial.—Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a court-martial and in the manner stated in sections 82 and 86.

82. Punishment of persons other than officers and warrant officers.—Subject to the provisions of section 84, a commanding officer or such other officer as is, with the consent of the Central Government, specified by the Commander-in-Chief, may, in the prescribed manner, proceed against a person subject to this

Act otherwise than as an officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,—

- (a) detention up to twenty-eight days;
- (b) confinement to the camp up to fourteen days;
- (c) extra guards or duties not exceeding three in number;
- (d) deprivation of acting rank;
- (e) forfeiture of * * * * badge * pay;
- (f) severe reprimand or reprimand;
- (g) fine up to fourteen days' pay in any one month;
- (h) penal deductions under clause (g) of section 92;
- (i) admonition;
- (j) any prescribed field punishment up to twenty-eight days, in the case of a person on active service.

83. Requirement of sanction in certain cases.—(1) Subject to the provisions of sub-section (2), the punishments mentioned in section 82 shall not be inflicted in respect of an offence under any of the sections 34, 35 and 36 when committed on active service or under any of the sections 37, 38, 40, 42(f) and (g), 48, 47, 52, 60, 62, 63, 64, 66(a), (b) and (c) and 71 except with the previous sanction in writing of an officer having power to convene a district court-martial.

(2) The said punishments may be awarded without such sanction in the case of any offence, other than an offence under section 34 or section 71, committed by persons who have not been enrolled as combatants.

84. Limit of punishments under section 82.—(1) An award of punishment under section 82 shall not include field punishment in addition to one or more of the punishments specified in clauses (a) and (b) of that section.

(2) In the case of an award of two or more of the punishments specified in clauses (a), (b) and (c) of the said section, the punishment specified in clause (b) or clause (c) shall take effect only at the end of the punishment specified in clause (a).

(3) When two or more of the punishments specified in the said clauses (a) and (b) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-two days.

(4) The punishments specified in clauses (a), (b), (c), (e), (g) and (j) of section 82 shall not be awarded to any person who is of the rank of non-commissioned officer or w/o, at the time of committing the offence for which he is punished, of such rank.

(5) The punishment specified in clause (f) of the said section shall not be awarded to any person below the rank of a non-commissioned officer.

85. Punishments in addition to those specified in section 82.—The Commander-in-Chief may, with the consent of the Central Government, specify such other punishments as may be awarded under section 82 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishments may be awarded.

86. Punishment of officers and warrant officers.—An officer having power to convene a general court-martial or such other officer as is, with the consent of the Central Government, specified by the Commander-in-Chief may, in the

prescribed manner, proceed against an officer below the rank of squadron leader or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

- (a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a court-martial;
- (b) severe reprimand or reprimand;
- (c) stoppage of pay and allowance until any proved loss or damage occasioned by the offence of which he is convicted is made good but subject to the right of the accused specified in clause (a);
- (d) forfeiture of pay and allowances for a period not exceeding three months for an offence under clause (e) of section 42 in so far as it consists of neglect to obey flying orders or under section 62 or section 63.

87. Transmission of proceedings.—In every case in which punishment has been awarded under section 86, certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment, to a superior air force authority as defined in section 89.

88. Review of proceedings.—If any punishment awarded under section 86 appears to a superior air force authority as defined in section 89 to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

89. Superior air force authority.—For the purposes of sections 87 and 88, a "superior air force authority" means—

- (a) in the case of punishments awarded by a commanding officer, any officer superior in command to such commanding officer;
- (b) in the case of punishments awarded by any other authority, the Central Government, the Commander-in-Chief or other officer specified by the Commander-in-Chief.

90. Collective fines.—(1) Whenever any weapon or part of a weapon forming part of the equipment of a unit or detachment is lost or stolen, the officer commanding such unit or detachment may, after obtaining the report of a court of inquiry, impose a collective fine upon the warrant officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment should be held responsible for such loss or theft.

(2) Such fine shall be assessed as a percentage on the pay of the individuals on whom it falls.

CHAPTER VIII

PENAL DEDUCTIONS

91. Deductions from pay and allowances of officers.—The following penal deductions may be made from the pay and allowances of an officer, that is to say—

- (a) all pay and allowances due to an officer for every day he absents himself without leave, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government;

(b) all pay and allowances for every day while he is in custody or under suspension from duty on a charge for an offence of which he is afterwards convicted by a criminal court or a court-martial or by an officer exercising authority under section 86;

(c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;

(d) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be determined by the court-martial by whom he is convicted of such offence, or by an officer exercising authority under section 86;

(e) all pay and allowances ordered by a court-martial or an officer exercising authority under section 86 to be forfeited or stopped;

(f) any sum required to pay a fine awarded by a criminal court or a court-martial exercising jurisdiction under section 71;

(g) any sum required to make good any loss, damage, or destruction of public or service property which, after due investigation, appears to the Central Government to have been occasioned by the wrongful act or negligence on the part of the officer;

(h) all pay and allowances forfeited by order of the Central Government if the officer is found by a court of inquiry constituted by the Commander-in-Chief in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of, the enemy or in any manner to have aided the enemy, or to have allowed himself to be taken prisoner by the enemy through want of due precaution or through disobedience of orders or wilful neglect of duty, or having been taken prisoner by the enemy, to have failed to rejoin his service when it was possible to do so;

(i) any sum required by order of the Central Government to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

92. Deductions from pay and allowances of airmen.—Subject to the provisions of section 95, the following penal deductions may be made from the pay and allowances of an airman, that is to say,—

(a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of transportation or imprisonment awarded by a criminal court, or a court-martial, or of detention, or field punishment awarded by a court-martial or an officer exercising authority under section 82;

(b) all pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or a court-martial, or on a charge of absence without leave for which he is afterwards awarded detention or field punishment by an officer exercising authority under section 82;

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him;

(d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Central Government or by such officer as may be specified by that Government;

(e) all pay and allowances ordered by a court-martial or by an officer exercising authority under section 82 or section 86 to be forfeited or stopped;

(f) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by, or while in the hands of, the enemy;

(g) any sum required to make good such compensation for any expenses, loss, damage or destruction caused by him to the Central Government or to any building or property as may be awarded by his commanding officer;

(h) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 71, or an officer exercising authority under section 82 or section 90;

(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

93. Computation of time of absence or custody.—For the purposes of clauses (a) and (b) of section 92—

(a) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any air force duty which was thereby thrown upon some other person;

(c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody.

(d) a period of absence, or imprisonment, which commences before, and ends after, midnight may be reckoned as a day.

94. Pay and allowances during trial.—In the case of any person subject to this Act who is in custody or under suspension from duty on a charge for an offence, the prescribed officer may direct that the whole or any part of the pay and allowances of such person shall be withheld, pending the result of his trial on the charge against him, in order to give effect to the provisions of clause (b) of sections 91 and 92.

95. Limit of certain deductions.—The total deductions from the pay and allowances of a person made under clauses (e) and (g) to (i) of section 92 shall not, except where he is sentenced to dismissal, exceed in any one month one-half of his pay and allowances for that month.

96. Deduction from public money due to a person.—Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

97. Pay and allowances of prisoner of war during inquiry into his conduct.—Where the conduct of any person subject to this Act when being taken prisoner by, or while in the hands of, the enemy, is to be inquired into under this Act or any other law, the Commander-in-Chief or any officer authorised by him may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.

98. Remission of deductions.—Any deduction from pay and allowances authorised by this Act may be remitted in such manner, and to such extent, and by such authority, as may from time to time be prescribed.

99. Provision for dependants of prisoner of war from remitted deductions.—In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under clause (h) of section 91 or clause (a) of section 92, but in respect of whom a remission has been made under section 98, it shall be lawful for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

100. Provision for dependants of prisoner of war from his pay and allowances.—It shall be lawful for proper provision to be made by the prescribed authorities for any dependants of any person subject to this Act, who is a prisoner of war or is missing, out of his pay and allowances.

101. Period during which a person is deemed to be a prisoner of war.—For the purposes of sections 99 and 100, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 97, and if he is cashiered or dismissed from the service in consequence of such conduct, until the date of such cashiering or dismissal.

CHAPTER IX

ARREST AND PROCEEDINGS BEFORE TRIAL

102. Custody of offenders.—(1) Any person subject to this Act who is charged with an offence may be taken into air force custody.

(2) Any such person may be ordered into air force custody by any superior officer.

(3) Any officer may order into air force custody any officer, though he may be of a higher rank, engaged in a quarrel, affray or disorder.

103. Duty of commanding officer in regard to detention.—(1) It shall be the duty of every commanding officer to take care that a person under his command when charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him to be impracticable with due regard to the public service.

(2) Every case of a person being detained in custody beyond a period of forty-eight hours, and the reason thereof shall be reported by the commanding officer to the air or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

(3) In reckoning the period of forty-eight hours specified in sub-section (1), Sundays and public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Central Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in air force custody, pending the trial by any competent authority for any offence committed by him.

104. Interval between committal and court-martial.—In every case where any such person as is mentioned in section 102 and as is not on active service remains in such custody for a longer period than eight days, without a court-martial for his trial being ordered to assemble, a special report giving reasons for

the delay shall be made by his commanding officer in the manner prescribed; and a similar report shall be forwarded every eight days until a court-martial is assembled or such person is released from custody.

105. Arrest by civil authorities.—Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to air force custody of such person upon receipt of a written application to that effect signed by his commanding officer.

106. Capture of deserters.—(1) Whenever any person subject to this Act deserts, the commanding officer of the unit or detachment to which he belongs, shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into air force custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

107. Inquiry into absence without leave.—(1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries, and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the unit to which the person belongs shall enter in the court-martial book of the unit a record of declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

108. Provost-marshals.—(1) Provost-marshals may be appointed by the Commander-in-Chief, or by any prescribed officer.

(2) The duties of a provost-marshall *** are to take charge of persons confined for any offence, to preserve good order and discipline, and to prevent breaches of the same by persons serving in, or attached to, the Air Force.

(3) A provost-marshall may at any time arrest and detain for trial any person subject to this Act who commits, or is charged with, an offence, and may also carry into effect any punishment to be inflicted in pursuance of the sentence awarded by a court-martial, or by an officer exercising authority under section 82 but shall not inflict any punishment on his own authority:

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

(4) For the purposes of sub-sections (2) and (3), a provost-marshall shall be deemed to include a provost-marshall appointed under the Army Act or the Navy Act and any person legally exercising authority under him or on his behalf.

CHAPTER X

COURTS-MARTIAL

109. Different kinds of courts-martial.—For the purposes of this Act there shall be three kinds of courts-martial, that is to say,—

- (a) general courts-martial;
- (b) district courts-martial; and
- (c) summary general courts-martial.

110. Power to convene a general court-martial.—A general court-martial may be convened by the Central Government or the Commander-in-Chief, or by any officer empowered in this behalf by warrant of the Commander-in-Chief.

111. Power to convene a district court-martial.—A district court-martial may be convened by an officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

112. Contents of warrants issued under sections 110 and 111.—A warrant issued under section 110 or section 111 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

113. Power to convene a summary general court-martial.—The following authorities shall have the power to convene a summary general court-martial, namely:—

- (a) an officer empowered in this behalf by an order of the Central Government or of the Commander-in-Chief;
- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;
- (c) an officer commanding any detached portion of the Air Force on active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a general court-martial.

114. Composition of general court-martial.—A general court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of flight-lieutenant.

115. Composition of district court-martial.—A district court-martial shall consist of not less than three officers, each of whom has held a commission for not less than two whole years.

116. Composition of summary general court-martial.—A summary general court-martial shall consist of not less than three officers.

117. Dissolution of court-martial.—(1) If a court-martial after the commencement of a trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

(2) If, on account of the illness of the judge advocate or of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) The officer who convened a court-martial may dissolve such court-martial if it appears to him that the exigencies of the service or the necessities of discipline render it impossible or inexpedient to continue the said court-martial.

(4) Where a court martial is dissolved under this section, the accused may be tried again.

118. Powers of general and summary general courts-martial.—A general or summary general court-martial shall have power to try any person subject to this Act for any offence punishable therein and to pass any sentence authorised thereby.

119. Powers of district court-martial.—A district court-martial shall have power to try any person subject to this Act other than an officer or warrant officer for any offence made punishable therein, and to pass any sentence authorised by this Act other than a sentence of death, transportation, or imprisonment for a term exceeding two years.

120. Prohibition of second trial.—When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under section 82 or section 86, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

121. Period of limitation for trial.—(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after expiration of a period of three years from the date of such offence.

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.

(3) In computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion, other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer has, subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the Air Force.

* * * * *

122. Liability of offender who ceases to be subject to Act.—(1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in air force custody, and tried and punished for such offence as if he continued to be so subject.

(2) Except as provided by sub-sections (3) and (4), any such person shall not be tried for an offence, unless his trial commences within six months after he had ceased to be subject to this Act.

(3) The provisions of sub-section (2) shall not apply to the trial of any such person for an offence of mutiny, desertion or fraudulent enrolment.

(4) Nothing contained in sub-section (2) shall affect the jurisdiction of a civil court to try any offence triable by such court as well as by a court-martial.

(5) When a person subject to this Act is sentenced by a court-martial to transportation or imprisonment, this Act shall apply to him during the term of

his sentence, though he is cashiered or dismissed from the Air Force, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(6) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

123. Place of trial.—Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

124. Choice between criminal court and court-martial.—When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the Commander-in-Chief, the officer commanding any group, wing or station in which the accused prisoner is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in air force custody.

125. Power of criminal court to require delivery of offender.—(1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 124 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government whose order upon such reference shall be final.

126. Successive trials by a criminal court and a court-martial.—(1) A person convicted or acquitted by a court-martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence, or on the same facts.

(2) If a person sentenced by a court-martial under this Act or punished under section 82 or section 86 is afterwards tried and convicted by a criminal court for the same offence, or on the same facts, that court shall, in awarding punishment have regard to the punishment he may already have undergone for the said offence.

CHAPTER XI

PROCEDURE OF COURTS-MARTIAL

127. Presiding Officer.—At every general, district or summary general court-martial the senior member shall be the presiding officer.

128. Judge Advocate.—Every general court-martial shall, and every district or summary general court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Chief Legal Adviser or if no such officer is available, an officer approved by the Chief Legal Adviser or any of his deputies.

129. Challenges.—(1) At all trials by general, district or summary general courts-martial, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer, decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

130. Oaths of member, judge advocate and witness.—(1) An oath or affirmation in the prescribed manner shall be administered to every member of every court-martial and to the judge advocate before the commencement of the trial.

(2) Every person giving evidence before a court-martial shall be examined after being * * * duly sworn or affirmed in the prescribed form.

(3) The provisions of sub-section (2) shall not apply where the witness is a child under twelve years of age and the court-martial is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation.

131. Voting by members.—(1) Subject to the provisions of sub-sections (2) and (3), every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused.

(2) No sentence of death shall be passed by a general court-martial without the concurrence of at least two-thirds of the members of the court.

(3) No sentence of death shall be passed by a summary general court-martial without the concurrence of all the members.

(4) In matters other than a challenge or the finding or sentence, the presiding officer shall have a casting vote.

132. General rule as to evidence.—The Indian Evidence Act, 1872 (I of 1872), shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

133. Judicial notice.—A court-martial may take judicial notice of any matter within the general air force knowledge of the members.

134. Summoning witnesses.—(1) The convening officer, the presiding officer of a court-martial, the judge advocate or the commanding officer of the accused person, may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to air force authority, the summons shall be sent to his commanding officer, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

135. Documents exempted from production.—(1) Nothing in section 134 shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872 (I of 1872), or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(2) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, High Court or court of session, wanted for the purpose of any court-martial, such magistrate or court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(3) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or High Court or Court of Session.

136. Commissions for examination of witnesses.—(1) Whenever, in the course of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Chief Legal Adviser in order that a commission to take the evidence of such witness may be issued.

(2) The Chief Legal Adviser may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) The magistrate or officer to whom the commission is issued, or, if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under the Code of Criminal Procedure, 1898 (Act V of 1898) or any corresponding law in force in a Part B State.

(4) When the witness resides in a tribal area or in any place outside India, the commission may be issued in the manner specified in Chapter XL of the Code of Criminal Procedure, 1898 (Act V of 1898), or of any corresponding law in force in a Part B State.

(5) In this and the next succeeding section, the expression "Chief Legal Adviser" includes a Deputy Chief Legal Adviser.

137. Examination of a witness on commission.—(1) The prosecutor and the accused person in any case in which a commission is issued under section 136 may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer executing the commission shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused person may appear before such magistrate or officer by counsel or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

(3) After a commission issued under section 136 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder to the Chief Legal Adviser.

(4) On receipt of a commission and deposition returned under sub-section (3), the Chief Legal Adviser shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(5) In every case in which a commission is issued under section 136, the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

138. Conviction for offence not charged.—(1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before a court-martial with using criminal force may be found guilty of assault.

(4) A person charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a court-martial with any one of the offences specified in clauses (a), (b), (c) and (d) of section 52 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a court-martial with an offence punishable under section 71 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), were applicable.

(7) A person charged before a court-martial with any offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted or abetted the commission of that offence, although the attempt or abetment is not separately charged.

139. Presumption as to signatures.—In any proceeding under this Act, any application, certificate, warrant, reply, or other document purporting to be signed by an officer in the service of the Government shall, on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

140. Enrolment paper.—(1) Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.

(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

141. Presumption as to certain documents.—(1) A letter, return or other document respecting the service of any person in, or the cashiering, dismissal or discharge of any person from, any portion of the Air Force, or respecting the circumstance of any person not having served in, or belonged to, any portion of the Forces, if purporting to be signed by or on behalf of the Central Government or the Commander-in-Chief, or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(2) An Army, Navy or Air Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers or warrant officers therein mentioned, and of any appointment held by them and of the unit or branch of the services to which they belong.

(3) Where a record is made in any service book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of air force duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated.

(4) A copy of any record in any service book purporting to be certified to be a true copy by the officer having custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of any officer or other person subject to this Act, or any portion of the Air Force, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the commanding officer of that portion of the Air Force, or by the commanding officer of the unit, or detachment to which such person belongs, as the case may be, and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed, shall be evidence of the matters so stated.

(6) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.

142. Reference by accused to Government officer.—(1) If at any trial for desertion or absence without leave, overstaying leave or not rejoicing when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial.

143. Evidence of previous convictions and general character.—(1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of any previous convictions of such person, either by a court-martial or by a criminal court, or any previous award of punishment under section 82 or section 86 and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records, and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

144. Lunacy of accused.—(1) Whenever, in the course of a trial by a court-martial, it appears to the court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the court shall record a finding accordingly.

(2) The presiding officer of the court shall forthwith report the case to the confirming officer.

(3) The confirming officer to whom the case is reported under sub-section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was charged.

(4) A confirming officer confirming a finding in any case so reported to him under sub-section (2) shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.

(5) On receipt of a report under sub-section (4) the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

145. Subsequent fitness of lunatic accused for trial.—Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 144, the officer commanding a unit or detachment within the area of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may—

(a) if such person is in custody under sub-section (4) of section 144, on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained in a jail under sub-section (5) of section 144, on a certificate of the Inspector General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section on a certificate of any two or more of the visitors of such asylum that he is capable of making his defence,

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged, or, if the offence is a civil offence, by a criminal court.

146. Transmission to Central Government of orders under section 145.—A copy of every order made by an officer under section 145 for the trial of the accused shall forthwith be sent to the Central Government.

147. Release of lunatic accused.—Where any person is in custody under sub-section (4) of section 144 or under detention under sub-section (5) of that section—

(a) if such person is in custody under the said sub-section (4), on the report of a medical officer, or

(b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 145 that, in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person, the Central Government may order that such person be released, or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

148. Delivery of lunatic accused to relatives.—Where any relative or friend of any person who is in custody under sub-section (4) of section 144 or under detention under sub-section (5) of that section desires that he should be delivered to his care and custody, the Central Government may upon application by such relative or friend and on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of and prevented from doing injury to himself or any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

149. Order for custody and disposal of property pending trial.—When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

150. Order for disposal of property regarding which offence is committed.—
(1) After the conclusion of a trial before any court-martial, the court or the officer confirming the finding or sentence of such court-martial or any authority superior to such officer, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which any offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), or any corresponding law in force in a Part B State.

(3) In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

151. Powers of courts-martial when certain offences are committed by persons not subject to this Act.—Any trial by a court-martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and the court-martial shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

CHAPTER XII

CONFIRMATION AND REVISION

152. Finding and sentence not valid, unless confirmed.—No finding or sentence of a general, district or summary general court-martial shall be valid except so far as it may be confirmed as provided by this Act.

153. Power to confirm finding and sentence of general court-martial.—The findings and sentences of general courts-martial may be confirmed by the Central Government, * * * or by any officer empowered in this behalf by warrant of the Central Government.

154. Power to confirm finding and sentence of district court-martial.—The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of such officer.

155. Limitation of powers of confirming authority.—A warrant issued under section 153 or section 154 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

156. Power to confirm finding and sentence of summary general court-martial.—The findings and sentences of summary general courts-martial may be confirmed by the convening officer or if he so directs, by an authority superior to him.

157. Power of confirming authority to mitigate, remit or commute sentences.—(1) Subject to such restrictions, reservations or conditions as may be contained in any warrant issued under section 153 or section 154 and to the provisions of sub-sections (2) and (3), a confirming authority may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 73.

(2) A sentence of transportation shall not be commuted for a sentence of imprisonment or detention for a term exceeding the term of transportation awarded by the court.

(3) A sentence of imprisonment shall not be commuted for a sentence of detention for a term exceeding the term of imprisonment awarded by the court.

158. Confirming of findings and sentences on board a ship.—When any person subject to this Act is tried and sentenced by a court-martial while on board a ship, the finding and sentence so far as not confirmed and executed on board the ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

159. Revision of finding or sentence.—(1) Any finding or sentence of a court-martial may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or, if a summary general or district court-martial, of three officers.

160. Alteration of finding or sentence in certain cases.—(1) Where a finding of guilty by a court-martial, which has been confirmed, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 177 to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

Provided that no such substitution shall be made unless such finding could have been validly made by the court-martial on the charge and unless it appears that the court-martial must have been satisfied of the facts establishing the offence.

(2) Where a sentence passed by a court-martial which has been confirmed not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority referred to in sub-section (1) may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by, the sentence for which a new sentence is substituted under this section.

(4) Any finding substituted, or any sentence passed under this section shall for the purposes of this Act and the rules made thereunder have effect as if it were a finding or sentence, as the case may be, of a court-martial.

161. Remedy against order finding or sentence of court-martial.—(1) Any person subject to this Act who considers himself aggrieved by any order passed by a court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of a court-martial which has been confirmed, may present a petition to the Central Government, the Commander-in-Chief or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Commander-in-Chief or other officer, as the case may be, may pass such order thereon as it or he thinks fit.

162. Annulment of proceedings.—The Central Government, the Commander-in-Chief or any prescribed officer may annul the proceedings of any court-martial on the ground that they are illegal or unjust.

CHAPTER XIII

EXECUTION OF SENTENCES

163. Form of sentence of death.—In awarding a sentence of death, a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

164. Commencement of sentence of transportation or imprisonment.—Whenever any person is sentenced by a court-martial under this Act to transportation, imprisonment or detention the term of his sentence shall, whether

it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer.

165. Execution of sentence of transportation.—Whenever any sentence of transportation is passed under this Act or whenever any sentence of death be commuted to transportation, the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

166. Execution of sentence of imprisonment.—(1) Whenever any sentence of imprisonment is passed under this Act or whenever any sentence of death or transportation is commuted to imprisonment, the confirming officer or such other officer as may be prescribed, shall, save as otherwise provided in sub-sections (3) and (4), direct either that the sentence shall be carried out by confinement in a military or air force prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub-section (1) the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months, the officers referred to in sub-section (1) may direct that the sentence shall be carried out by confinement in air force custody instead of in a civil or military or air force prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint.

167. Temporary custody of offender.—Where a sentence of transportation or imprisonment is directed to be undergone in a civil prison, the offender may be kept in military or air force custody or in any other fit place, till such time as it is possible to send him to a civil prison.

168. Execution of sentence of imprisonment in special cases.—Whenever, in the opinion of an air or other officer commanding a group, any sentence or portion of a sentence of imprisonment cannot for special reasons, conveniently be carried out in a military or air force prison or in air force custody in accordance with the provisions of section 166 such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

169. Conveyance of prisoner from place to place.—A person under sentence of transportation or imprisonment may, during his conveyance from place to place, or when on board ship, aircraft, or otherwise, be subject to such restraint as is necessary for his safe conduct and removal.

170. Execution of sentence of detention.—Whenever any sentence of detention is passed under this Act, or whenever any sentence of death, transportation or imprisonment is commuted to detention, the sentence shall be carried out by detaining the offender in any military or air force detention barracks, detention cells or other military or air force custody; and when the sentence is to be carried out by detention in any military or air-force detention barracks, the commanding officer of the person under sentence or such other officer as

may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the detention barracks in which the person under sentence is to be detained, and shall forward the person under sentence to such detention barracks with the warrant.

171. Communication of certain orders to prison officers.—Whenever an order if duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil, military or air force prison or detained in a military or air force detention barracks, a warrant in accordance with such order shall be forwarded by the officer making the order, or his staff officer, or such other person as may be prescribed, to the officer in charge of the prison or detention barracks in which such person is confined.

172. Execution of sentence of fine.—When a sentence of fine is imposed by a court-martial under section 71 whether the trial was held within India or not, a copy of such sentence, signed and certified by the confirming officer may be sent to any magistrate in India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) or any corresponding law in force in a Part B State, for the levy of fines as if it were a sentence of fine imposed by such magistrate.

173. Establishment and regulation of air force prisons.—The Central Government may set apart any building or part of a building, or any place under its control, as an air force prison or detention barracks for the confinement of persons sentenced to imprisonment or detention under this Act.

174. Informality or error in the order or warrants.—Whenever a person is sentenced to transportation, imprisonment or detention under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into or is confined in any such place, and any such order, warrant or document may be amended accordingly.

175. Power to make rules in respect of prisons and prisoners.—The Central Government may make rules providing—

(a) for the government, management and regulation of air force prisons and detention barracks;

(b) for the appointment, removal and powers of inspectors, visitors, governors and officers thereto;

(c) for the labour of prisoners undergoing confinement therein, and for enabling such prisoners or persons to earn by special industry and good conduct, a remission of a portion of their sentence;

(d) for the safe custody of such prisoners or persons and the maintenance of discipline among them and the punishment, by personal correction, restraint or otherwise, of offences committed by them;

(e) for the application to air force prisons or detention barracks of any of the provisions of the Prisons Act, 1894 (IX of 1894), relating to the duties of officers of prisons and the punishment of persons not being prisoners;

(f) for the admission into any prison, at proper times and subject to proper restrictions, of persons with whom prisoners may desire to communicate and for the consultation by prisoners under trial with their legal advisers without the presence as far as possible of any third party within hearing distance.

176. Restriction of rule-making power in respect to corporal punishment.—

Rules made under section 175 shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment more severe than it is under any law for the time being in force relating to civil prisons in India.

CHAPTER XIV

PARDONS, REMISSES AND SUSPENSIONS

177. Pardon and remission.—When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government, the Commander-in-Chief, an air or other officer commanding a group, or the prescribed officer, may—

(a) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or

(b) mitigate the punishment awarded; or

(c) commute such punishment for any less punishment or punishments mentioned in this Act:

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court; and a sentence of imprisonment shall not be commuted for a sentence of detention for a term exceeding the term of imprisonment so awarded;

(d) either with or without conditions which the person sentenced accepts, release the person on parole.

178. Cancellation of conditional pardon, release on parole or remission.—(1)

If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of transportation, imprisonment or detention is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

179. Reduction of warrant officer or non-commissioned officer.—When under the provisions of section 79 a warrant officer or a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purpose of section 177 be treated as a punishment awarded by a sentence of a court-martial.

180. Suspension of sentence of transportation, imprisonment or detention.—(1) Where a person subject to this Act is sentenced by a court-martial to transportation, imprisonment or detention, the Central Government, the Commander-in-Chief or any officer empowered to convene a general or a summary general court-martial may suspend the sentence whether or not the offender has already been committed to prison or to air force custody.

(2) The authority or officer specified in sub-section (1) may in the case of an offender so sentenced direct that, until the orders of such authority or officer have been obtained, the offender shall not be committed to prison or to air force custody.

(3) The powers conferred by sub-sections (1) and (2) may be exercised in the case of any such sentence which has been confirmed, reduced or commuted.

181. Orders pending suspension.—A confirming officer may, when confirming any sentence referred to in section 180, direct that the offender be not committed to prison or to air force custody until the orders of the authority or officer specified in section 180 have been obtained.

182. Release on suspension.—Where a sentence is suspended under section 180, the offender shall forthwith be released from custody.

183. Computation of period of suspension.—Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence.

184. Order after suspension.—The authority or officer specified in section 180 may, at any time while a sentence is suspended, order—

(a) that the offender be committed to undergo the unexpired portion of the sentence, or

(b) that the sentence be remitted.

185. Reconsideration of case after suspension.—(1) Where a sentence has been suspended, the case may at any time, and shall, at intervals of not more than four months, be reconsidered by the authority or officer specified in section 180, or by any air or other officer not below the rank of squadron leader duly authorised by the authority or officer specified in section 180.

(2) Where on such reconsideration by the officer so authorised it appears to him that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified in section 180.

186. Fresh sentence after suspension.—Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then—

(a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently;

(b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed to prison or air force custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently; and

(c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 181 or section 185, continue to be suspended.

187. Scope of power of suspension.—The powers conferred by sections 180 and 184 shall be in addition to and not in derogation of, the power of mitigation, remission and commutation.

188. Effect of suspension and remission on dismissal.—(1) Where, in addition to any other sentence the punishment of dismissal has been awarded by a court-martial, and such other sentence is suspended under section 180, then, such

dismissal shall not take effect until so ordered by the authority or officer specified in section 180.

(2) If such other sentence is remitted under section 184, the punishment of dismissal shall also be remitted.

CHAPTER XV

RULES

189. Power to make rules.—(1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the rules made thereunder may provide for—

- (a) the removal, retirement, release or discharge from the service of persons subject to this Act;
- (b) the amount and incidence of fines to be imposed under section 90*;
- (c) the specification of the punishment which may be awarded as field punishments under sections 77 and 82;
- (d) the assembly and procedure of courts of inquiry, the recording of summaries of evidence and the administration of oaths or affirmations by such courts;
- (e) the convening and constituting of courts-martial and the appointment of prosecutors at trials by courts-martial;
- (f) the adjournment, dissolution and sitting of courts-martial;
- (g) the procedure to be observed in trials by courts-martial and the appearance of legal practitioners thereat;
- (h) the confirmation, revision and annulment of, and petitions against, the findings and sentences of courts-martial;
- (i) the carrying into effect of sentences of courts-martial;
- (j) the forms of orders to be made under the provisions of this Act relating to courts-martial, transportation, imprisonment and detention;
- (k) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 100 and the due carrying out of such decisions;
- (l) the relative rank of the officers, junior commissioned officers, warrant officers, petty officers and non-commissioned officers of the regular Army, Navy and Air Force when acting together;
- (m) any other matter directed by this Act to be prescribed.

190. Power to make regulations.—The Central Government may make regulations for all or any of the purposes of this Act other than those specified in section 189.

191. Publication of rules and regulations in Gazette.—All rules and regulations made under this Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

192. Repeal.—The Indian Air Force Act, 1932 (XIV of 1932), with the exception of sections 126 to 128I thereof, is hereby repealed.

CHAPTER XVI
TRANSITORY PROVISIONS

193. Definition of "British officer".—(1) In this Chapter "British officer" means a person of non Indian domicile holding a commission in His Majesty's Air Forces and serving in the Air Force.

(2) The expression "superior officer" in this Act shall be deemed to include a British officer.

194. Powers of British officer.—A British officer shall have all the powers conferred by this Act on an officer of corresponding rank or holding a corresponding appointment.

The following Report of Select Committee on the Bill further to amend the Insurance Act, 1938, was presented to Parliament on the 24th March, 1950:—

We, the undersigned, members of the Select Committee to which the Bill further to amend the Insurance Act, 1938, was referred, have considered the Bill and the evidence placed before us by the representatives of the following bodies of persons, namely, The Calcutta Insurance Association, Calcutta, The Association of Life Assurance Offices in India, Calcutta, The All India (Life) Chief Agents Association, Bombay, The Indian Insurance Companies Association, Bombay, The Federation of Indian Insurance Companies, New Delhi, The Indian Life Assurance Offices Association, Bombay, The Actuarial Society of India, Bombay, The Insurance Underwriters Association of India, Calcutta, and The Association of Indian Insurance Offices, Calcutta, and have now the honour to submit this our Report with the Bill as amended by us annexed thereto.

Upon the changes proposed by us which are not formal or consequential we note, as follows.

Clauses 3 and 5.—In our opinion, it is sufficient to designate the head of the Department of Insurance as the Controller of Insurance, and in choosing the Controller, the Central Government should take into account whether such person has had experience in industrial, commercial or insurance matters and whether he has actuarial qualifications.

Clause 6.—In our opinion, bodies incorporated outside India should also be public companies in the same manner as is required of Indian companies before they are allowed to carry on insurance business in India. We are also providing that exemptions granted to insurers carrying on general insurance business should not have effect for more than three years at any one time, and that Parliament should be kept informed of every such exemption.

Clause 9.—We think that companies which have more than one class of shares should have three years to convert all such shares into one class, but the voting right should always be proportionate to the paid-up value of the shares. Companies which commence life insurance business after the amending Bill comes into force should have only one class of shares with a single face value and equal voting rights, and existing companies should hereafter issue only ordinary shares.

We have omitted sub-section (3) of the proposed section 6A, as, in our opinion, sub-section (4) thereof is sufficient to cover it. We have, however, added a provision expressly providing for a right of suit by a person who is the beneficial owner of the share and whose right the nominal holder of the

share refuses to recognise. We have also provided that in cases where banks hold shares merely as custodians, the beneficial owner should have the right to vote.

We think that a much longer period than one year is required for the liquidation of excess shares which may be held by any person at the commencement of the amending Act, as otherwise a sudden release of the shares may cause a disturbance in the market. We have further provided that if any shareholder is unable to get his shares sold, the Administrator General should come to the rescue.

In the proposed section 6B we have made it clear that the appeal should be confined to modifying or correcting the scheme.

Clause 13.—We think that in suitable cases the Controller should have the power to postpone the date of actuarial valuation by one year.

Clause 16.—We feel that uninvestible assets like interest (outstanding and accrued) cash, furniture, fittings and stationery should be considered as approved investments, but the matter could easily be left to be regulated by rules. Hence the proposed section 27(2)(c).

We also feel that the Central Government should have the power to direct that in computing the assets, any investment made outside India (for example in Pakistan) belonging to insurers in India should be taken into account in the prescribed manner.

Clause 17.—We have added a few items to the list of approved investments and have clarified the position with regard to co-operative societies and co-operative banks.

It might cause hardship to any insurer to realise any investment properly made which has ceased to be an approved investment after it has been so made. We have, therefore, provided for this contingency in the proposed section 27A(18).

Clause 19.—We think that a complete return of all the assets forming the controlled fund should be furnished annually in addition to the quarterly statements showing changes therein.

Clause 20.—In our opinion the temporary advances payable under the proposed sub-section (3) of section 29 should also be admissible to special agents and insurance agents newly appointed but subject to certain restrictions.

Clause 23.—We have extended the period for compliance with the proposed section 31A from three months to one year.

In the proposed section 31B we have provided that if a person resigns he should continue to get the renewal commission due to him, but the rate of such commission should be approved by the Central Government.

Clause 24.—We have added a further exception to the restrictions contained in the proposed section 32A.

Clause 25.—An order directing the Controller to cancel the registration of the insurer being a vital matter should be appealable and, therefore, we have split up clause (b) of sub-section (4) of the proposed section 33 into two separate clauses. Incidentally, we are deleting the existing sections 33 and 34 of the Insurance Act, because their provisions are fully covered by the proposed section 33.

Clause 31 (read with the proposed Sixth Schedule).—We think that the minimum number of insurance agents for a special agent should be two and for a chief agent, six in the case of small companies, and twelve in the case of big

companies. The special agent may at the same time be permitted to do personal business, but he should procure annually for the insurer at least business to the extent of fifty thousand rupees sum assured. The principal agent may also in certain circumstances be permitted to do personal business.

Some relaxation in the case of principal agents doing head office work for foreign insurers should, in our opinion, be allowed for a limited period as in the proviso to the proposed section 40A(4).

The limitation of expenses regarding life insurance business should be brought into force from 1st January, 1951, while the limitation of expenses for general insurance business may be from 1st January, 1950. We think that the basic limitation in either case should be prescribed by rules made under the Act, but the rules so made should have due regard to the size and age of the insurers concerned.

We also feel that all decisions connected with relaxations in the limits of expenses for insurers should be taken by the Controller himself, after consulting the Executive Committee of the relevant Insurance Council.

Clause 33.—We think that the system of employing principal agents in general insurance business should be put an end to within a period of seven years, and during that period appointment of new principal agents should be confined to presidency-towns. We have amended the proposed section 42B accordingly.

In our opinion, there is no need to terminate immediately existing contracts between insurers and chief agents, but they should, in any event, be terminated after the expiry of ten years from the commencement of the including Act. We also think that in respect of the commission payable to chief agents on renewal premiums paid on policies already secured, the rate should be fixed in the Bill itself. The proposed section 42C has been amended in this behalf.

Clause 34.—We are of opinion that the commission payable to an agent in respect of renewal premiums paid on policies secured by him should continue to be payable, although he has ceased to work for the insurer, provided he had worked continuously for the insurer for five years and had built up a business in force of fifty thousand rupees. The renewal commission should, however, not exceed four per cent. We have also provided that on the death of such an agent, the commission should continue to be payable to the heirs for so long as it would have been paid had the deceased been alive.

Clause 37.—We have added a provision for the levy of a fee by the Controller for settling small disputed claims.

Clause 38.—We think that it is not necessary to debar an ex-employee of the insurer from being elected as a policyholders' director. Consequently, the only amendment required in section 48(2A) is the substitution of the proposed proviso for the existing second proviso.

Clause 41.—In our opinion ten per cent of the surplus is somewhat too large for allocation to the shareholders, and we have, therefore, reduced it to 7½ per cent.

Clause 45.—In our opinion insurers with head offices in India should be full members of the Councils, while other insurers should be associate members. The proposed provisions in section 64F are, however, sufficiently elastic to ensure that all associate members and other persons connected with insurance are adequately represented on the Councils.

Although officials are to be nominated to the Councils, they should not be given the right to vote, as otherwise it might be embarrassing to the Controller in exercising his powers under the Insurance Act. We have amended the proposed section 64F(1) accordingly.

The proposed sections 64J and 64L have been amended to provide for the rendering of advice by Councils to the Controller in the matter of limitation of expenses.

We have added a new section 64N providing that the two Executive Committees may act together in certain matters.

Clause 65: the Sixth Schedule, Part B.—We think that the provision requiring chief agents to have 12 or 24 agents is difficult to comply with and we have, therefore, reduced the figures to 6 and 12, respectively. For the same reason, we have substituted for the words "any calendar year" the words "two successive calendar years" in paragraph 4.

The Bill was published in Part V of the *Gazette of India*, dated the 8th November, 1949.

We think that the Bill has not been so altered as to require circulation, and we recommend that it be passed as now amended.

B. R. AMBEDKAR
 K. C. NEOGY
 M. ANANTHASAYANAM AYYANGAR.
 M. THIRUMALA RAO.
 B. PATTABHI SITARAMAYYA.
 *R. N. GOENKA
 *T. A. RAMALINGAM CHETTIAR.
 *M. L. GAUTAM
 **M. R. MASANI
 *AJIT PRASAD JAIN
 *MAHAVIR TYAGI.
 L. KRISHNASWAMI BHARATI.
 A. C. GUHA
 P. D. HIMATSINGKA.
 B. L. SONDHI

New Delhi,
 The 24th March, 1950.

NOTE

At an early stage during the proceedings of the Select Committee we raised the question of the nationalization of the insurance business and we had an overwhelming support of the Committee. Nevertheless we realised the force of the contention that the question of nationalization was not within the ambit of the powers of the Committee and therefore we did not press it.

We still consider insurance to be eminently suited for nationalization for the reasons that it is capable of being conducted on a standardised basis, that there

* Subject to a Note.

** Subject to a Minute of Dissent.

are large funds at its disposal which can be utilized for national and social development and that the persons with the largest stake, namely, the policy holders, have hardly any control over the working of the Insurance Companies. We therefore, owe an explanation as to why we have accepted to be a party of this Bill. The Bill regulates capital structure, investments and management of Insurance Companies with a view to avoid their inter-locking with banking, investment and other companies and rule out bad investments. It also controls expenses and gives wider power of investigation. It rationalizes the insurance business by organising it in the form of Insurance Association of India, Life Insurance and General Insurance Councils and their executive, tariff and other committees. We hope that the present Bill will not only safeguard the interests of the policy holders and place the insurance business on a sound footing, but by giving larger powers of control to the State, it will add to the experience of the public administration in handling insurance business and habituate the private enterprise to accept public control in the larger interests of the community and thus pave the way for nationalization. That is the justification for giving our support to this half-way measure.

M. L. GAUTAM

AJIT PRASAD JAIN.

MAHAVIR TYAGI.

T. A. RAMALINGAM CHETTIAR

R. N. GOENKA.

NEW DELHI;

The 24th March, 1950.

MINUTE OF DISSENT

1. I regret I do not find myself in agreement with the terms of Clause 25 of the Bill as recommended by the Select Committee. My objection is to sub-clause (5) of proposed new Section 34A of the Act. Under sub-clause (1) (a), Government have the right to pass orders on the report to be made to them in connection with the affairs of an insurer. Sub-clause (5) ousts the jurisdiction of the Courts in respect of all matters covered by an order of Government under sub-clause (4) (a). As the powers vested in Government under sub-clause (4) (a) are extremely wide, it is essential that there should be a right of appeal to the Courts given to the insurer from the decision of Government. The separation of executive and judicial powers has been a demand voiced with unanimity by all popular organisations in India for some decades now. The separation of the Judiciary from the Executive is also one of the Directive Principles of State Policy laid down in the Constitution of the Republic that has just been enacted. The provision as recommended by the Select Committee combines executive and judicial powers in the same hands and constitutes an unwarranted encroachment by the executive on the rights of the citizen and on the powers of the judiciary. If provisions of this kind find a place on the Statute Book, they may prove to be the thin end of the authoritarian wedge. I feel, therefore, I must record my dissent from this particular feature of the Bill.

2. I feel I must also record my dissent from certain changes introduced in the Bill which are designed to increase the powers of the Controller to the prejudice of the Life Insurance Council and the General Insurance Council respectively. In the Bill, as introduced, Clause 31 gave to the Executive Committees of these Councils certain powers, while in the Bill as it now emerges from the Select Committee these powers have been transferred to the Controller after consultation with the relevant Executive Committee, thus reducing the

latter to a merely advisory status. Consequential changes have also been recommended in Clause 45 bringing the provisions of Part II A in line with this important change. I find it difficult to understand the reason for these changes, since the provision in the Bill providing for two nominees of Government on these Committees should be considered an adequate safeguard. This country is now embarking on a phase of governmental control and regulation of various sectors of economic life and it is important that, with a view to avoid the growth of bureaucracy and centralisation of economic power with all the evils that are likely to follow, every effort should be made at decentralisation of control and that autonomous institutions such as the Life Insurance and General Insurance Councils contemplated in this Bill should be given the fullest autonomy to run their affairs subject only to minimum interference from the Government of the day. Judged from this angle, the change made in the Bill is of a retrograde character.

M. R. MASANI.

NEW DELHI,
The 24th March, 1950.

A Bill No. 47 of 1949.

[As AMENDED BY THE SELECT COMMITTEE]

(*Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate omission.*)

A Bill further to amend the Insurance Act, 1938.

Be it enacted by Parliament as follows:—

1. Short title and commencement.—(1) This Act may be called the Insurance (Amendment) Act, 1950.

(2) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and different dates may be appointed for different provisions of this Act.

2. Amendment of section 1, Act IV of 1938.—For sub-section (2) of section 1 of the Insurance Act, 1938 (hereinafter referred to as the said Act), the following sub-section shall be substituted, namely:—

“(2) It extends to the whole of India except the State of Jammu and Kashmir”.

3. Amendment of section 2, Act IV of 1938.—In section 2 of the said Act,—

(1) for clause (3), the following clause shall be substituted, namely:—

‘(3) “approved securities” means—

(i) Government securities and other securities charged on the revenues of the Central Government or of the Government of a Part A State or guaranteed fully as regards principal and interest by the Central Government, or the Government of any Part A State* * *;

(ii) debentures or other securities for money issued under the authority of any Central Act or Act of a State Legislature * * by or on behalf of a port trust or municipal corporation or city improvement trust in any presidency-town;

(iii) shares of a corporation established by law and guaranteed fully by the Central Government or the Government of a Part A State as to the repayment of the principal and the payment of dividend;

(iv) securities issued or guaranteed fully as regards principal and interest by the Government of any Part B State* * and specified as approved securities for the purposes of this Act by the Central Government by notification in the Official Gazette; and

(v) subject to the limitations contained in the proviso hereto, securities guaranteed fully as regards principal and interest by a Provincial Government in Pakistan or charged on the revenues of any part of that Dominion, and debentures or other securities for money issued by or on behalf of the trustees of the port of Karachi:

Provided that securities or debentures specified in item (v) shall be recognised as approved securities only for such purposes and for such period and subject to such conditions as may be prescribed.;

(2) for clause (4), the following clause shall be substituted, namely:—

(4) “auditor” means a person qualified under the Chartered Accountants Act, 1949 (XXXVIII of 1949) to act as an auditor of companies;’;

(3) after clause (4), the following clause shall be inserted, namely:—

(4A) “banking company” and “company” shall have the meanings respectively assigned to them in clauses (c) and (d) of sub-section (1) of section 5 of the Banking Companies Act, 1949 (X of 1949);’;

(4) after clause (5), the following clauses shall be inserted, namely:—

(5A) “chief agent” means a person who, not being a salaried employee of an insurer, in consideration of any commission—

(i) performs any administrative and organising functions for the insurer, and

(ii) procures life insurance business for the insurer by employing or causing to be employed insurance agents on behalf of the insurer.

(5B) “Controller of Insurance” or “Controller” means the officer appointed by the Central Government to perform the duties of the Controller of Insurance under this Act;’;

(5) after clause (6), the following clauses shall be inserted, namely:—

(6A) “fire insurance business” means the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policies;

(6B) “general insurance business” means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of the n;’;

(6) for clause (7), the following clause shall be substituted, namely:—

(7) “Government security” means a Government security as defined in the Public Debt Act, 1944 (XVIII of 1944);’;

(7) in clause (9),—

(i) in sub-clause (a) the words "or of any Part B State" shall be omitted, and

(ii) for the words "but does not include an insurance agent licensed under section 42" the words "but does not include a principal agent, chief agent, special agent, or an insurance agent" shall be substituted;

(8) in clause (10), the following words shall be added at the end, namely:—

"including business relating to the continuance, renewal or revival of policies of insurance";

(9) after clause (10), the following clause shall be inserted, namely:—

'(10A) "investment company" means a company whose principal business is the acquisition of shares, stocks, debentures or other securities;';

(10) for clause (11), the following clause shall be substituted, namely:—

'(11) "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,

(b) the granting of annuities upon human life; and

(c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons;';

(11) after clause (13), the following clauses shall be inserted, namely:—

'(13A) "marine insurance business" means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interests which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit by land or water, or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit, and includes any other risks customarily included among the risks insured against in marine insurance policies;

(13B) "miscellaneous insurance business" means the business of effecting contracts of insurance which is not principally or wholly of any kind or kinds included in clauses (6A), (11) and (13A);',

(12) for clause (14A) the following clause shall be substituted, namely:—

'(14A) the expressions "State" and "States" do not include the State of Jammu and Kashmir';

(13) for clause (15), the following clauses shall be substituted, namely.—

(15) "principal agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission,—

(i) performs any admnistrative and organising functions for the insurer, and

(ii) procures general insurance business by employing or causing to be employed insurance agents on behalf of the insurer;

* * * * *

(16) "private company" and "public company" have the meanings respectively assigned to them in clauses (13) and (13A) of section 2 of the Indian Companies Act, 1913 (VII of 1913);

(17) "special agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission, procures life insurance business for the insurer, by employing or causing to be employed insurance agents on behalf of the insurer, but does not include a chief agent."

4. Substitution of "Controller" for "Superintendent of Insurance" and "Superintendent".—In the said Act, for the words "Superintendent of Insurance" and "Superintendent", the word "Controller" shall be substituted.

* * * * *

5. Insertion of new sections 2A and 2B in Part I, Act IV of 1938.—(1) In Part I, after section 2 of the said Act, the following sections shall be inserted, namely.—

"2A *Rule of construction in applying Act to Part B States.*—In the application of this Act to any Part B State to which this Act extends, unless the context otherwise requires, references to any enactment in force in Part A States but not in force in that Part B State shall be construed as references to the corresponding enactment, if any, in force in that State.

ZB. Appointment of Controller of Insurance.—(1) The Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance under this Act.

(2) In making any appointment under this section, the Central Government shall have due regard to the following considerations, namely, whether the person to be appointed has had experience in industrial, commercial or insurance matters and whether such person has actuarial qualifications.

6. Insertion of new section 2C in Part II, Act IV of 1938.—In Part II of the said Act, sections 2A and 2B shall be renumbered as sections 2D and 2E, and before the sections as so renumbered, the following section shall be inserted, namely—

"2C *Prohibition of transaction of insurance business by certain persons.*—(1) Save as herein after provided, no person shall, after the commencement of the Insurance (Amendment) Act, 1950, begin to carry on any class of insurance business in the States and no insurer carrying on any class of insurance business in the States shall after the expiry of one year from such commencement, continue to carry on any such business unless he is—

(a) a public company, or

(b) a society registered under the Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force in any State relating to co-operative societies, or

(c) a body corporate incorporated under the law of any country* * outside India not being of the nature of a private company:

Provided that the Central Government may, by notification in the Official Gazette, exempt from the operation of this section to such extent for such period and subject to such conditions as it may specify, any person or insurer for the purpose of carrying on the business of granting superannuation allowances and annuities of the nature specified in sub-clause (c) of clause (II) of section 2 or for the purpose of carrying on any general insurance business:

Provided further that in the case of an insurer carrying on any general insurance business no such notification shall be issued having effect for more than three years at any one time.

(2) Every notification issued under sub-section (1) shall be laid before Parliament as soon as may be after it is issued.

7. Amendment of section 3, Act IV of 1938.—In section 3 of the said Act,—

(1) in sub-section (4),—

(i) for clause (f), the following clause shall be substituted, namely:—

"(f) if the insurer makes default in complying with, or acts in contravention of, any requirement of this Act or of any rule or order made thereunder, or";

(ii) for clause (h), the following clause shall be substituted, namely:—

"(h) if the insurer carries on any business other than insurance business or any prescribed business";

(2) in sub-section (5C) for the words, figure and letter "or that he has complied with the order under section 3B" the words "or that he has complied with any requirement of this Act or of any rule or order made thereunder or that he has ceased to carry on any business other than insurance business or any prescribed business" shall be substituted;

(3) in sub-section (6), for the figures and word "5, 10 and 32", the figures, letters and word "2C, 5, 6A, 10(2A), 31A and 32" shall be substituted.

8. Amendment of section 4, Act IV of 1938.—In sub-section (1) of section 4 of the said Act, for the words and figures "the Insurance Act, 1938" the words "this Act" shall be substituted.

9. Insertion of new sections 6A, 6B and 6C in Act IV of 1938.—After section 6 of the said Act, the following sections shall be inserted, namely:—

"6A. Requirements as to capital structure and voting rights and maintenance of registers of beneficial owners of shares.—(1) No public company limited by shares having its registered office in the States, shall * * * * carry on life insurance business, unless it satisfies all the following conditions, namely:—

(i) that the capital of the company consists only of ordinary shares each of which has a single face value;

(ii) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new:

* * * * *

Provided that the conditions specified in this sub-section shall not apply to a public company which has, before the commencement of the Insurance (Amendment) Act, 1950, issued any shares other than ordinary shares each of which has a single face value or any shares the paid-up amount whereof is not the same for all of them for a period of three years from such commencement.

(2) Notwithstanding anything to the contrary contained in any law for the time being in force or in the memorandum or articles of association but subject to the other provisions contained in this section the voting right of every shareholder of any public company as aforesaid shall in all cases be strictly proportionate to the paid-up amount of the shares held by him.

(3) No public company as aforesaid which carries on life insurance business shall, after the commencement of the Insurance (Amendment) Act, 1950, issue any shares other than ordinary shares of the nature specified in sub-section (1).

(4) A public company as aforesaid which carries on life insurance business—

(a) shall maintain, in addition to the register of members to be maintained under the Indian Companies Act, 1913 (VII of 1913), a register of shares in which shall be entered the name, occupation and address of the beneficial owner of each share, and shall incorporate therein any change of beneficial owner declared to it within fourteen days from the receipt of such declaration;

(b) shall not register any transfer of its shares—

(i) unless, in addition to compliance being made with the provisions of section 34 of the Indian Companies Act, 1913 (VII of 1913), the transferee furnishes a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee, whether jointly or severally, on behalf of others, and in the latter case giving the name, occupation and address of the beneficial owner or owners, and the extent of the beneficial interest of each; and

(ii) where, after the transfer, the total paid-up holding of the transferee in the shares of the company is likely to exceed five per cent. of its paid-up capital or where the transferee is a banking or an investment company, is likely to exceed two and a half per cent. of such paid-up capital, unless the previous sanction of the Central Government has been obtained to the transfer.

* * * * *

(5) Every person who has any interest in any share of a company referred to in sub-section (4) which stands in the name of another person in the register of members of the company, shall, within thirty days from the commencement of the Insurance (Amendment) Act, 1950, or from the date on which he acquires such interest, whichever is later, make a declaration in the prescribed form (which shall be countersigned by the person in

whose name the share is registered) to the company declaring his interest in such share, and notwithstanding anything contained in any other law or in any contract to the contrary, a person who fails to make a declaration as aforesaid in respect of any share shall be deemed to have no right or little whatsoever in those shares:

Provided that nothing in this sub-section shall affect the right of a person who has an interest in any such share to establish in a court his right thereto, if the person, in whose name the share is registered, refuses to countersign the declaration as required by this sub-section:

Provided further that where any share, belonging to an individual who has made any such declaration as is referred to in this sub-section, is held by a company in its name in pursuance of any trust or for the purpose of safe custody or collection or realisation of dividend, such individual shall, notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), or in the memorandum or articles of association of the company which has issued the share, be deemed to be the holder of the said share for the purpose of exercising any voting rights under this section to the exclusion of any other person.

(6) If the total paid-up holding of any person in the shares of a company referred to in sub-section (1) on the commencement of the Insurance (Amendment) Act, 1950, exceeds two and a half per cent. of its paid-up capital where that person is a banking company or an investment company, or five per cent. of its paid-up capital in any other case, he shall not be entitled to any vote as a shareholder of the company in respect of such excess holding of shares.

(7) Where the total paid-up holding of any person in the shares of a company referred to in sub-section (1) on the date of the commencement of the Insurance (Amendment) Act, 1950, exceeds five per cent. of its paid-up capital where that person is a banking company or an investment company, or ten per cent. of its paid-up capital in any other case, he shall dispose of the excess holding of shares within three years from such commencement or such further period not exceeding two years as may be allowed to him by the Central Government.

(8) If, after the expiry of three years or of such further period as may be allowed to any person under sub-section (7), the total paid-up holding of any such person has not been reduced to the limits specified in that sub-section, any shares in excess of the limits specified in that sub-section shall vest in the Administrator General of the State in which the registered office of the company concerned is situate and the Administrator General shall take such steps as may be necessary for taking charge of any property which has so vested in him and shall dispose of the said shares and the proceeds thereof in such manner as may be prescribed.

(9) The Central Government may, subject to such restrictions as it may think fit to impose, exempt from the operation of sub-sections (6), (7) and (8) any insurance company, in any case where the total paid-up holding of such insurance company in the shares of any other insurance company exceeds the limits specified in the said sub-sections, if the other insurance company is or is to be made a subsidiary company of the insurance company.

Explanation.—For the purposes of this section * * *, the holding of a person in the shares of a company shall be deemed to include—

(i) the total paid-up holding in such shares held by such person in the name of others; and

(ii) if any shares of the company are held—

(a) by a public limited company, of which such person is a member holding more than ten per cent. of the paid-up capital, or

(b) by a private limited company, of which such person is a member, or

(c) by a company, of which such person is a managing director, manager, managing agent or in which he has a controlling interest, or

(d) by a firm in which such person is a partner, or

(e) by such person jointly with others,

such part of the total paid-up holding of the company or firm or of the total joint holding in those shares, as is proportionate to the contribution made by such person to the paid-up capital of the company, the paid-up capital of the firm or the joint holding, as the case may be.

6B. *Provision for securing compliance with requirements relating to capital structure.*—(1) For the purpose of enabling any public company carrying on life insurance business to bring its capital structure into conformity with the requirements of section 6A, an officer appointed in this behalf by the Central Government may, notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913),—

(a) examine any scheme proposed for the purpose aforesaid by the directors of the company:

Provided that—

(i) the scheme has been placed before a meeting of the shareholders for their opinion and has been forwarded to the officer together with the opinion of the shareholders thereon; and

(ii) the scheme does not involve any diminution of the liability of the shareholders in respect of unpaid-up share capital;

(b) invite objections and suggestions in respect of the scheme so proposed; and

(c) after considering such objections and suggestions to the scheme so proposed, sanction it with such modifications as he may consider necessary or desirable.

(2) Any shareholder or other person aggrieved by the decision of the officer sanctioning a scheme under sub-section (1) may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the High Court within whose jurisdiction the registered office of the insurer is situate for the purpose of modifying or correcting any such scheme for the purpose specified in sub-section (1).

(3) The decision of the High Court where an appeal has been preferred to it under sub-section (2), or of the officer aforesaid where no such appeal has been preferred, shall be final and binding on all the shareholders and other persons concerned.

6C. *Conversion of company limited by shares into company limited by guarantee.*—(1) Where a public company limited by shares carrying on insurance business has passed a special resolution for converting itself into

a public company limited by guarantee, it may apply to the Central Government with a scheme for putting the special resolution into effect, including any provision for the alteration of the memorandum or articles of association in so far as it may be necessary for this purpose.

(2) If the Central Government, after giving such notice to any person concerned as it thinks fit, is satisfied—

(a) that the scheme makes suitable provision with respect to the repayment, conversion or liquidation of the paid-up capital of the company,

(b) that the consent of the creditors to the conversion of the company limited by shares into a company limited by guarantee has been obtained, or that suitable provisions have been made for discharging, determining or securing the debts or claims of such creditors, and

(c) that the scheme is otherwise reasonable, it may sanction the scheme and thereupon the scheme shall become binding on the company and on all the persons concerned.

(3) Against the decision of the Central Government sanctioning a scheme under sub-section (2), any person aggrieved thereby may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the High Court within whose jurisdiction the registered office of the insurer is situate.

(4) The decision of the High Court where an appeal has been preferred to it under sub-section (3) or of the Central Government where no such appeal has been preferred, shall be final and binding on all the persons concerned.

(5) Where a scheme has been sanctioned under this section, the company shall file with the Registrar of companies a certified copy of the scheme as sanctioned, and thereupon the provisions of the Indian Companies Act, 1913 (VII of 1913), relating to companies limited by guarantee shall become applicable to the company."

10. Amendment of section 7, Act IV of 1938.—In section 7 of the said Act,—

(i) in clause (d) of sub-section (1), the words "that is to say, insurance which is not in the opinion of the Central Government principally or wholly of any kind or kinds included in clauses (a), (b) or (c)" shall be omitted;

(ii) in sub-section (4) and the proviso to sub-section (5), the words "and not being an insurer incorporated in or domiciled in the United Kingdom" shall be omitted.

11. Amendment of section 10, Act IV of 1938.—In sub-section (2) of section 10 of the said Act, for the words beginning with the words "and a statement, certified by an auditor" and ending with the words "in any case think fit to allow", the following shall be substituted, namely:—

"and every insurer shall, within the time limited in sub-section (1) of section 15 in regard to the furnishing of the statements and accounts referred to in section 11, furnish to the Controller a statement showing in detail such assets as at the close of every calendar year duly certified by an auditor or by a person qualified to audit under the law of the insurer's country:

Provided that such statement shall, in the case of an insurer to whom section 11 applies, be set out as a part of the balance sheet mentioned in clause (a) of sub-section (1) of that section:

Provided further that an insurer may show in such statement all the assets held in his life department, but at the same time showing any deductions on account of general reserves and other liabilities of that department:

Provided also that the Controller may call for a statement similarly certified of such assets as it may other date specified by him to be furnished within a period of three months from the date with reference to which the statement is called for."

12. Amendment of section 11, Act IV of 1938.—In sub-section (2) of section 11 of the said Act,—

(i) for the words "accompanied by a statement containing the names and descriptions of the persons in charge of the management of the business", the words "accompanied by a statement containing the names, descriptions and occupations of, and the directorships held by, the persons in charge of the management of the business" shall be substituted, and

(ii) the words "by such persons" shall be omitted.

13. Amendment of section 13, Act IV of 1938.—In section 18 of the said Act,—

(i) in sub-section (1), and the proviso to sub-section (4), for the words "in every five years" the words "in every three years" shall be substituted;

(ii) to sub-section (1), the following provisos shall be added, namely.—

"Provided that the Controller may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than four years from the date as at which the previous investigation was made.

Provided further that for an insurer carrying on life insurance business in the States at the commencement of the Insurance (Amendment) Act, 1950, the last date as at which the first investigation after such commencement should be caused to be made by an actuary shall be—

(a) the 31st day of December, 1950, or the date of expiration of five years from the date as at which the last investigation was made by an actuary before such commencement, whichever is earlier, where the said last investigation was at a date—

(i) before the 31st day of December, 1946, but not more than five years before such commencement, or

(ii) after the 30th day of December, 1946, but before the 31st day of December, 1947, and had disclosed a deficit in the life insurance fund;

(b) the 31st day of December, 1951, where the last investigation by an actuary before such commencement was at a date—

(i) after the 30th day of December, 1946, but before the 31st day of December, 1947, and did not disclose a deficit in the life insurance fund; or

(ii) after the 30th day of December, 1947, but before the 31st day of December, 1948;

(c) the 31st day of December, 1952, where the last investigation by an actuary before such commencement was as at any date after the 30th day of December, 1948, but before the 1st day of January, 1950:

Provided also that, in the case of an insurer who has not caused an investigation to be made by an actuary as at any date prior to such commencement, the date of commencement of life insurance business in the States shall, for the purpose of the preceding proviso, be deemed to be the date as at which the last investigation was made by an actuary before such commencement and such investigation shall be deemed to have disclosed no deficit in the life insurance fund."

14. Amendment of section 19, Act IV of 1938.—In section 19 of the said Act, for the words "an abstract of the proceedings of every general meeting" the words "a certified copy of the minutes of the proceedings of every general meeting, as entered in the Minutes Book of the insurer" shall be substituted.

15. Amendment of section 21, Act IV of 1938.—In clause (d) of sub-section (1) of section 21 of the said Act,—

(i) after the words "delivered to the insurer" the words "or of such further time as the Controller may specify in the requisition" shall be inserted;

(ii) after the word and figures "section 28" the words, figures, and letter "or section 28A" shall be inserted.

16. Substitution of new section for section 27, Act IV of 1938.—For section 27 of the said Act, the following section shall be substituted, namely:—

27. Investment of assets.—(1) Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of—

(a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and

(b) the amount required to meet the liability on policies of life insurance maturing for payment in India, less—

(i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and

(ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability

in the manner following, namely, twenty-five per cent of the said sum in Government securities, a further sum equal to not less than twenty-five per cent. of the said sum in Government securities or other approved securities and the balance in any of the approved investments specified in sub-section (7) of section 27A or, subject to the limitations, conditions and restrictions specified in sub-section (2) of that section, in any other investment.

(2) For the purposes of sub-section (7),—

(a) the amount of any deposit made under section 7 or section 98 by the insurer in respect of his life insurance business shall be deemed to be assets invested or kept invested in Government securities;

(b) the securities of, or guaranteed as to principal and interest by, the Government of the United Kingdom shall be regarded as approved securities other than Government securities for a period of four years from the commencement of the Insurance (Amendment) Act, 1950, in the manner and to the extent hereinafter specified, namely,—

(i) during the first year, to the extent of twenty-five per cent in value of the sum referred to in sub-section (1);

(ii) during the second year, to the extent of eighteen and three-fourths per cent. in value of the said sum;

(iii) during the third year, to the extent of twelve and a half per cent. in value of the said sum; and

(iv) during the fourth year, to the extent of six and a quarter per cent. in value of the said sum:

Provided that, if the Central Government so directs in any case, the securities specified in clause (b) shall be regarded as approved securities other than Government securities for a longer period than four years, but not exceeding six years in all, and the manner in which and the extent to which the securities shall be so regarded shall be as specified in the direction.

(c) any prescribed assets shall, subject to such conditions, if any, as may be prescribed, shall be deemed to be assets invested or kept invested in approved investments specified in sub-section (1) of section 27A.

(3) In computing the assets referred to in sub-section (1),—

(a) any investment made with reference to any currency other than the Indian rupee which is in excess of the amount required to meet the liabilities of the insurer in India with reference to that currency, to the extent of such excess; and

(b) any investment made in the purchase of any immovable property outside India or on the security of any such property,

shall not be taken into account:

Provided that nothing contained in this sub-section shall affect the operation of sub-section (2):

Provided further that the Central Government may, either generally or in any particular case, direct that any investment, whether made before or after the commencement of the Insurance (Amendment) Act, 1950, and whether made in or outside India, shall, subject to such conditions as may be imposed, be taken into account in such manner as may be specified in computing the assets referred to in sub-section (1) and where any direction has been issued under this proviso copies thereof shall be laid before Parliament as soon as may be after it is issued.

(4) Where an insurer has accepted reinsurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded reinsurance to another insurer in respect of any such policies issued by himself, the sum referred to in sub-section (1) shall be increased by the amount of the liability involved in such acceptance and decreased by the amount of the liability involved in such cession.

(5) The Government securities and other approved securities in which assets are under sub-section (1) to be invested and kept invested shall be held by the insurer free of any encumbrance, charge, hypothecation or lien.

(6) The assets required by this section to be held invested by an insurer incorporated or domiciled outside the States shall, except to the extent of any part thereof which consists of foreign assets held outside the States, be held in the States, and all such assets shall be held in trust for the discharge of the liabilities of the nature referred to in sub-section (1) and shall be vested in trustees resident in the States and approved by the Central Government, * * * * and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Central Government and shall define the manner in which alone the subject-matter of the trust shall be dealt with.

Explanation.—This sub-section shall apply to an insurer incorporated in the States whose share-capital to the extent of one-third is owned by, or the members of whose governing body to the extent of one-third consists of, members domiciled elsewhere than in the States."

17. Insertion of new section 27A in Act IV of 1938.—After section 27 of the said Act, the following section shall be inserted, namely—

"27A. *Further provisions regarding investments.*—(1) No insurer shall invest or keep invested any part of his controlled fund otherwise than in any of the following approved investments, namely—

(a) approved securities;

(b) securities of, or guaranteed as to principal and interest by, the Government of the United Kingdom * * * *;

(c) debentures or other securities for money issued with the permission of the State Government by any municipality in a State;

(d) debentures or other securities for money issued by any authority constituted under any housing or building scheme approved by the Central or a State Government, or by any authority or body constituted by any Central Act or Act of a State Legislature;

(e) first mortgages on immovable property situated in India under any housing or building scheme of the insurer approved by the Central Government or a State Government;

(f) debentures secured by a first charge on any immovable property, plant or equipment of any company which has paid interest in full for the five years immediately preceding or for at least five out of the six or seven years immediately preceding on such or similar debentures issued by it;

(g) debentures secured by a first charge on any immovable property, plant or equipment of any company where either the book value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of such debentures;

(h) first debentures secured by a floating charge on all its assets of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

(i) preference shares of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

(i) preference shares of any company on which dividends have been paid for the five years immediately preceding or for at least five out of the six or seven years immediately preceding and which have priority in payment over all the ordinary shares of the company in winding up;

(k) shares of any company which have been guaranteed by another company, such other company having paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding:

Provided that the total amount of shares of all the companies under guarantee by the guaranteeing company is not in excess of fifty per cent. of the paid-up amount of preference and ordinary shares of the guaranteeing company;

(l) shares of any company on which dividends of not less than four per cent including bonus have been paid for the seven years immediately preceding or for at least seven out of the eight or nine years immediately preceding;

(m) first mortgages on immovable property situated in the States or in any other country where the insurer is carrying on insurance business;

Provided that the property mortgaged is not lease-hold property with an outstanding term of less than thirty years and the value of the property exceeds by one-third, or if it consists of buildings, exceeds by one half, the mortgage money;

(n) immovable property situated in the States or in any other country where the insurer is carrying on insurance business;

Provided that the property is free of all encumbrances;

(o) loans on * * life interests or on policies of life insurance within their surrender values issued by him or by an insurer whose business he has acquired and in respect of which business he has assumed liability;

(p) * * life interests;

(q) fixed deposits with banks included for the time being in the Second Schedule to the Reserve Bank of India Act, 1934 (II of 1934), or with co-operative societies registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force, the primary object of which is to finance other co-operative societies similarly registered;

(r) debentures of, or shares in * * *, co-operative societies registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force * * *;

(s) such other investments as the Central Government may, by notification in the Official Gazette, declare to be approved investments for the purposes of this section

(2) Notwithstanding anything contained in sub-section (1), an insurer being a company or a co-operative life insurance society as defined in clause (b) of sub-section (1) of section 95, may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund otherwise than in an approved investment, if—

(i) after such investment, the total amounts of all such investments of the insurer do not exceed fifteen per cent. of the sum referred to in sub-section (1) of section 27,

(ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given to all the directors then in the States, and all such investments, including investments in which any director is interested, are reported without delay to the Controller with full details of the investments and the extent of the director's interest in any such investment.

(3) An insurer shall not out of his controlled fund invest or keep invested in the shares of any one banking company or investment company more than—

(a) two and a quarter per cent. of the sum referred to in sub-section (1) of section 27, or

(b) two per cent. of the subscribed share capital and debentures of the banking company or investment company concerned, whichever is less.

(4) An insurer shall not out of the controlled fund invest or keep invested in the shares or debentures of any one company other than a banking company or investment company more than—

(a) two and a quarter per cent. of the sum referred to in sub-section (1) of section 27, or

(b) ten per cent. of the subscribed share capital and debentures of the company,

whichever is less.

Provided that nothing in this sub-section shall apply to any investment made with the previous consent of the Central Government by an insurer, being a company with a view to forming a subsidiary company carrying on insurance business.

(5) An insurer shall not out of his controlled fund invest or keep invested any sum in the shares or debentures of any private limited company.

(6) Where an investment is in partly paid-up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentages referred to in clause (a) of sub-section (3) and clause (a) of sub-section (4).

(7) Notwithstanding anything contained in sub-sections (3) and (4), where new shares are issued to the existing share-holders by a company the existing shares of which are covered by clause (i) or clause (k) or clause (l) of sub-section (1) and of which an insurer is already a shareholder, the insurer may subscribe to such new shares.

Provided that the proportion of new shares subscribed by him does not exceed the proportion which the paid-up amount on the shares held by him immediately before such subscription bears to the total paid-up capital of the company at the time of such subscription.

(8) If, on an application submitted through the Controller the Central Government is satisfied that special grounds exist warranting such exemption, the Central Government may for such period, to such extent and in relation to such particular investments and subject to such conditions as may be specified by it in this behalf, exempt an insurer from all or any of the provisions of sub-sections (3), (4) and (7).

(9) An insurer shall not keep more than three per cent. of the controlled fund in fixed deposit or current deposit, or partly in fixed deposit and partly in current deposit, with any one banking company or with any one co-operative society registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force and doing banking business:

Provided that in applying this sub-section to the amount in deposit with a banking company on any day all the premiums collected by that company on behalf of the insurer during the preceding thirty days shall be excluded.

(10) All assets forming the controlled fund, not being Government securities or other approved securities in which assets are to be invested or held invested in accordance with section 27, shall (except for a part thereof not exceeding one tenth of the controlled fund in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment), be held free of any encumbrance, charge, hypothecation or lien.

(11) If at any time the Central Government considers any one or more of the investments constituting an insurer's controlled fund to be unsuitable or undesirable, the Central Government may, after giving the insurer an opportunity of being heard, direct him to realise the investment or investments, and the insurer shall comply with the direction within such time as may be specified in this behalf by the Central Government.

(12) Every insurer in existence at the commencement of the Insurance (Amendment) Act, 1950, whose investments or any part thereof at such commencement contravene or contravenes any of the provisions of this section, shall, within ninety days from such commencement, submit to the Controller a report specifying all such investments, and, if the Central Government is satisfied that it will not be in the interest of the insurer or any class of insurers generally to realise any such investments, it may, by order, direct that the provisions of this section [other than the provisions contained in sub-section (11)] shall not apply in relation to any such investments or to any class of investments generally for such period or periods as may be specified in the order.

(13) Without prejudice to the powers given to the Central Government by sub-section (11), nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) after the commencement of this Act which, after the making thereof, has ceased to be an approved investment within the meaning of this section.

(14) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employe or to any security taken from any employee or other moneys of a like nature are required to be held by or under any Central Act, or Act of a State Legislature.

Explanation.—In this section “controlled fund” means—

- (a) in the case of any insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 and carrying on life insurance business—
 - (i) all his funds, if he carries on no other class of insurance business;
 - (ii) all the funds appertaining to his life insurance business if he carries on some other class of insurance business also; and
- (b) in the case of any other insurer carrying on life insurance business—
 - (i) all his funds in India, if he carries on no other class of insurance business;
 - (ii) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also;

but does not include any fund or portion thereof in respect of which the Controller is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Controller is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.”

18. Amendment of section 28, Act IV of 1938.—In section 28 of the said Act,—

- (i) in sub-section (1), the words “registered under this Act” shall be omitted;
- (ii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) In respect of the Government securities and other approved securities invested and kept invested in accordance with sub-section (1) of section 27 an insurer shall submit along with the returns referred to in sub-sections (1) and (2) a certificate, where such assets are in the custody of a banking company, from that company, and in any other case, from the chairman, two directors and a principal officer, if the insurer is a company, or otherwise from a principal officer of the insurer, to the effect that the securities are held free of any encumbrance, charge, hypothecation, or lien, and every such certificate after the first shall also state that since the date of the certificate immediately preceding all the securities have been so held

“(2B) In respect of the assets forming the controlled fund within the meaning of section 27A, and which do not form part of the Government securities and approved securities invested and kept invested in accordance with section 27, an insurer shall submit, along with the returns referred to in sub-sections (1) and (2), a statement, where such assets are in the custody of a banking company, from that company, and, in any other case, from the chairman, two directors and a principal officer if the insurer is a company, or from a principal officer of the insurer if the insurer is not a company, specifying the assets, which are subjected to a charge and certifying that the other assets are held free of any encumbrance, charge, hypothecation, or lien, and every such statement after the first shall also specify the charges

created in respect of any of those assets since the date of the statement immediately preceding, and, if any such charges have been liquidated, the date on which they were so liquidated."

19. Insertion of new section 28A in Act IV of 1938.—After section 28 of the said Act, the following section shall be inserted, namely.—

"28A. *Return of investments relating to controlled fund and changes therin*—(1) Every insurer carrying on life insurance business, shall every year, within thirty-one days from the beginning of the year submit to the Controller a return in the prescribed form showing as at the 31st day of December of the preceding year the investments made out of the controlled fund referred to in section 27A, and every such return shall be certified by a principal officer of the insurer.

(2) Every insurer referred to in sub-section (1) shall also submit to the Controller a return in the prescribed form showing all the changes that occurred in the investments aforesaid * * * during each of the quarters ending on the last day of March, June, September and December within thirty-one days from the close of the quarter to which it relates, and every such return shall be certified by a principal officer of the insurer."

20. Amendment of section 29, Act IV of 1938.—In section 29 of the said Act,—

(i) in the first proviso to sub-section (1), for the words "nothing herein contained" the words "nothing contained in this sub-section" shall be substituted;

(ii) the second and third provisos to sub-section (1) shall be omitted,

(iii) to the fourth proviso the following words shall be added, namely:—

"and where any such loan or advance is made out of any life insurance fund the matter shall be reported within thirty days of the making of such loan or advance to the Controller.";

(iv) after sub-section (2), the following sub-sections shall be added, namely:—

"(3) Subject to the provisions of sub-section (1), no insurer carrying on life insurance business shall grant—

(a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise, except such loans as are specified in sub-section (7) of section 27A,

(b) temporary advances to any chief, special or insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate—

(i) in the case of a chief agent, the over-riding renewal commission earned by him during the year immediately preceding,

(ii) in the case of a special agent, the renewal commission earned by him during the year immediately preceding,

(iii) in the case of an insurance agent, the renewal commission earned by him during the year immediately preceding.

Explanation.—The temporary advance referred to in

clause (b) of this sub-section shall also be admissible in the case of any special agent or insurance agent newly appointed, but such advance—

(a) shall be repayable within two years from the date on which such special agent or insurance agent was first appointed, and

(b) shall not exceed, in the case of the special agent, five hundred rupees, and, in the case of the insurance agent, one hundred rupees,

and the total amount of all advances so made shall not exceed ten thousand rupees in the case of any insurer whose business in force is one crore of rupees or more and five thousand rupees in any other case.

(4) Every loan or advance existing at the commencement of the Insurance (Amendment) Act, 1950, which contravenes the provisions of sub-section (3) shall be notified by the insurer to the Controller within thirty days of such commencement and shall notwithstanding any contract to the contrary be repaid within one year from such commencement.

(5) Where any event occurs giving rise to circumstances, the existence of which at the time of the grant of any subsisting loan or advance would have made such grant a contravention of this section, such loan or advance shall, notwithstanding anything in any contract to the contrary, be repaid within three months from the occurrence of such event.

(6) In case of default in complying with the provisions of sub-section (4) or sub-section (5), the director, manager, auditor, actuary, officer or partner, or the chief, special or insurance agent concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, or to act for, the insurer granting the loan on the expiry of the said period of one year or three months, as the case may be."

21. Amendment of section 30, Act IV of 1938.—In section 30 of the said Act after the word and figures "section 27" the word, figures and letter "section 27A" shall be inserted.

22. Amendment of section 31, Act IV of 1938.—In section 31 of the said Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Nothing contained in this section shall be deemed to prohibit the endorsement in favour of a banking company of any security or other document solely for the purpose of collection or for realisation of interest, bonus or dividend."

23. Insertion of new sections 31A and 31B in Act IV of 1938.—After section 31 of the said Act, the following sections shall be inserted, namely:—

"31A. Provisions relating to managers, etc.—(1) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or in the articles of association of the insurer, if a company, or in any contract or agreement, no insurer shall after the expiry of

one year from the commencement of the Insurance (Amendment) Act, 1950,—

- (a) be managed by a company or a firm, or
- (b) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus or a share in the valuation surplus in respect of the life insurance business of the insurer, or
- (c) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus in respect of the general insurance business of the insurer:

Provided that nothing in this sub-section shall be deemed to prohibit—

- (i) the payment of commission to a chief agent, special agent or an insurance agent, in respect of life insurance business procured by or through him;
- (ii) the payment of commission to a principal agent or an insurance agent in respect of general insurance business procured by or through him;

(iii) the payment of commission, with the approval of the Central Government and for such period as it may determine, to a person not being an officer of an insurer who was, on the 1st day of November, 1944, employing on behalf of an insurer, chief agents or special agents and continues so to do in respect of insurance business procured by or through him;

(iv) the employment of any individual in a clerical or other subordinate capacity who, as an insurance agent, receives commission in respect of insurance business procured by him;

(v) the employment as an officer of any individual who receives renewal commission in respect of life insurance business procured by him in his capacity as an insurance agent or as an employer of agents before such employment, or before the commencement of the Insurance (Amendment) Act, 1950, whichever is later;

(vi) the payment of a share in the profits of general insurance business * * *;

(vii) the payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration, such bonus, in the case of any employee, not exceeding in amount the equivalent of his salary for a period which, in the opinion of the Central Government, is reasonable having regard to the circumstances of the case.

(2) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, or in the articles of association of the insurer, being a company, or in any contract or agreement, no manager, managing director or any other person concerned in the management of an insurer's business shall be entitled to nominate a successor to his office and no person so nominated, whether before or after the commencement of the Insurance (Amendment) Act, 1950, shall be entitled to hold or to continue in such office.

(3) If in the case of any insurance company provision is made by the articles of association of the company or by an agreement entered into between any person and the company for empowering a director or manager or other officer of the company to assign his office to any other person, any assignment of office made in pursuance of the said provision, shall, notwithstanding anything to the contrary contained in the said provision or in section 80B of the Indian Companies Act, 1913, be void.

(4) No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any provision of this section.

31B. Power to restrict payment of excessive remuneration.—(1) The Central Government may if it is satisfied that any insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, is paying any person * * * remuneration, whether by way of commission or otherwise, on a scale disproportionate, according to the normal standards prevailing in insurance business, to the resources of the insurer, call upon the insurer to comply within six months with such directions as it may think fit to issue in the matter, and if compliance with the directions so issued requires the alteration of any of the terms of the contract entered into by the insurer with such person, no compensation shall be payable to such person by the insurer by reason only of such alteration or of the resignation of such person if the altered terms are not acceptable to him and no payment by way of renewal commission or otherwise shall be made to such person by the insurer in respect of any premiums paid after the date of such resignation except at such rate as may be approved by the Central Government in this behalf.

(2) Every insurer shall, before the close of the month following every year, submit to the Controller a statement in the prescribed form showing the remuneration paid, whether by way of commission or otherwise, to any person in cases where such remuneration exceeds the sum of five thousand rupees in that year.

(3) Where any person not being a chief agent, principal agent or special agent is in receipt of remuneration exceeding the sum of five thousand rupees in any year, the Controller may, by notice in writing require the insurer to submit certified copies of the agreement entered into between the insurer and any such person, and the insurer shall comply with any such requisition within the time specified in the notice."

24. Insertion of new section 32A in Act IV of 1938.—After section 82 of the said Act, the following section shall be inserted, namely:—

"32A. Prohibition of common officers and requirement as to whole-time officers.—(1) A managing director or other officer of an insurer specified in sub-clause (b) of clause (9) of section 2 and carrying on life insurance business shall not be a managing director or other officer of any other insurer carrying on life insurance business or of a banking company or of an investment company:

Provided that the Central Government may permit such managing director or other officer to be a managing director or other officer of any other insurer carrying on life insurance business for the purpose

of amalgamating the business of the two insurers or transferring the business of one insurer to the other.

(2) Where an insurer specified in sub-clause (b) of clause (9) of section 2 has a life insurance fund of more than twenty-five lakhs of rupees or insurance funds totalling more than fifty lakhs of rupees the manager, managing director or other officer of the insurer shall be a whole-time employee of the insurer:

Provided that the Central Government may, for such period as it thinks fit, permit the employment of any specified person as a part-time manager, managing director or other officer of such insurer.

(3) Nothing in this section shall prevent—

(a) the manager, managing director or other officer of an insurer being the manager, managing director or other officer of a subsidiary company of the insurer with the previous approval of the Central Government;

(b) the manager, managing director or other officer of an insurer, exclusively carrying on life insurance business, being the manager, managing director or other officer of an insurer not carrying on life insurance business;

(c) any officer of a branch of one insurer carrying on general insurance business from being any officer of a branch in the same town of another insurer carrying on general insurance business;

(d) an officer in the employment of an insurer from giving professional advice;

Explanation.—In this section the expression 'officer' does not include a director."

25. Substitution of new section for sections 33 and 34 in Act IV of 1938.—For sections 33 and 34 of the said Act, the following section shall be substituted, namely:—

"33. *Power of investigation.*—(1) The Central Government may at any time, by order in writing, direct the Controller or any other person specified in the order to investigate the affairs of any insurer and to report to the Central Government on any investigation made by him:

Provided that the Controller or the other person may, wherever necessary, employ an auditor or actuary or both for the purpose of assisting him in any investigation under this section.

(2) It shall be the duty of every manager, managing director or other officer of the insurer to produce before the person directed to make the investigation under sub-section (1) all such books of account, registers and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the insurer as the said person may require of him within such time as the said person may specify.

(3) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director or other officer of the insurer in relation to his business and may administer oaths accordingly.

(4) On receipt of any report under sub-section (1), the Central Government may, after giving such opportunity to the insurer to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing,—

(a) require the insurer to take such action in respect of any matter arising out of the report as the Central Government may think fit, or

(b) direct the Controller to cancel the registration of the insurer; or

(c) direct the Controller to apply to the Court for the winding up of the insurer, if a company, whether the registration of the insurer has been cancelled under clause (b) or not.

(5) No order made under this section other than an order made under clause (b) of sub-section (4) shall be capable of being called in question in any court.

(6) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer, shall have priority over other debts due from the insurer and shall be recoverable as an arrear of land-revenue."

26. Amendment of section 35, Act IV of 1938.—In section 35 of the said Act,—

(i) in sub-section (1), for the words "Court having jurisdiction over one or other of the parties concerned", the word "Controller" shall be substituted;

(ii) in sub-section (3), for the word "Court" and the words "Central Government", wherever they occur, the word "Controller" shall be substituted;

(iii) sub-section (4) shall be omitted.

27. Amendment of section 36, Act IV of 1938.—Section 36 of the said Act shall be renumbered as sub-section (1) of that section, and

(a) in that sub-section as so renumbered * * *, for the words "Court" and "it", wherever they occur, the words "Controller" and "he" shall respectively be substituted; and * * *

(b) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

"(2) If the arrangement involves a reduction of the amount of the insurance and other contracts of the transferor insurer or of any or all of the insurers concerned in the amalgamation, the Controller may sanction the arrangement, reducing the amount of such contracts upon such terms and subject to such conditions as he may think proper, and the reduction of contracts as sanctioned by the Controller shall be valid and binding on all the parties concerned."

28. Amendment of section 37, Act IV of 1938.—In section 37 of the said Act, for the word "Court", in both the places where it occurs, and for the words "Central Government", the word "Controller" shall be substituted

29. Amendment of section 39, Act IV of 1938.—In section 39 of the said Act, to sub-section (1) the following proviso shall be added, namely:—

"Provided that, where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive

the money secured by the policy in the event of his death during the minority of the nominee.

30. Amendment of section 40, Act IV of 1938.—In section 40 of the said Act,—

(i) in sub-section (1), for the words “or a person acting on behalf of an insurer who for purposes of insurance business employs insurance agents” the words “or a principal, chief or special agent” shall be substituted;

(ii) in sub-section (1A), after the words “and sections” the figures and letter “40A” shall be inserted;

(iii) to sub-section (2) the following further proviso shall be added, namely.—

“Provided further that nothing in this sub-section shall apply in respect of any policy of life insurance issued after the 31st day of December, 1950, or in respect of any policy of general insurance issued after the commencement of the Insurance (Amendment) Act, 1950.”;

(iv) in the proviso to sub-section (2A), after the words “notice in writing to the insurance agent through whom the policy was effected”, the words “if such agent continues to be an agent of the insurer” shall be inserted.

31. Insertion of new sections 40A to 40C in Act IV of 1938.—After section 40 of the said Act, the following sections shall be inserted, namely.—

“40A Limitation of expenditure on commission.—(1) No person shall pay or contract to pay to an insurance agent, and no insurance agent shall receive or contract to receive by way of commission or remuneration in any form in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950, and effected through an insurance agent, an amount exceeding—

(a) where the policy grants an immediate annuity or a deferred annuity in consideration of a single premium, or where only one premium is payable on the policy, two per cent. of that premium,

(b) where the policy grants a deferred annuity in consideration of more than one premium, seven and a half per cent. of the first year's premium, and two per cent. of each renewal premium, payable on the policy, and

(c) in any other case, thirty-five per cent. of the first year's premium, seven and a half per cent. of the second and third year's renewal premium, and thereafter five per cent. of each renewal premium, payable on the policy:

Provided that in a case referred to in clause (c), an insurer, during the first ten years of his business, may pay to an insurance agent, and an insurance agent may receive from such an insurer, forty per cent. of the first year's premium payable on the policy

* * * * *

(2) No person shall pay or contract to pay to a special agent, and no special agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of life insurance

issued in India by an insurer after the 31st day of December, 1950, and effected through a special agent, an amount exceeding—

(a) in a case referred to in clause (a) of sub-section (1), one half per cent. of the premium,

(b) in a case referred to in clause (b) of sub-section (1), two per cent. of the first year's premium payable on the policy, and

(c) in a case referred to in clause (c) of sub-section (1), fifteen per cent. of the first year's premium payable on the policy:

Provided that in a case referred to in clause (c), an insurer, during the first ten years of his business, may pay to a special agent, and a special agent may receive from such an insurer, seventeen and a half per cent. of the first year's premium payable on the policy.

(3) No person shall pay or contract to pay to an insurance agent, and no insurance agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of general insurance issued in India by an insurer after the commencement of the Insurance (Amendment) Act, 1950, and effected through an insurance agent, an amount exceeding—

(a) where the policy relates to fire or miscellaneous insurance, fifteen per cent. of the premium payable on the policy, and

(b) where the policy relates to marine insurance, ten per cent. of the premium payable on the policy.

(4) No person shall pay or contract to pay to a principal agent, and no principal agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of general insurance issued in India by an insurer after the commencement of the Insurance (Amendment) Act, 1950, and effected through a principal agent, an amount exceeding—

(a) in the case referred to in clause (a) of sub-section (3), twenty per cent. of the premium payable on the policy, and

(b) in the case referred to in clause (b) of that sub-section, fifteen per cent. of the policy,

less any commission payable to any insurance agent in respect of the said policy:

Provided that the Central Government may, in such circumstances and to such extent and for such period as may be specified, authorise the payment of commission or remuneration exceeding the limits specified in this sub-section to a principal agent of an insurer incorporated or domiciled elsewhere than in India, if such agent carries out and has continuously carried out in his own office duties on behalf of the insurer which would otherwise have been performed by the insurer.

(5) Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-sections by an insurer, any insurance agent who contravenes the provisions of sub-section (1) or sub-section (3) * * * shall be punishable with fine which may extend to one hundred rupees.

40B. Limitation of expenses of management in life insurance business.
 (1) Every insurer transacting life insurance business in India shall furnish to the Controller, within such time as may be prescribed, ** statements in the prescribed form certified by an actuary on the basis of premiums currently used by him in regard to new business in respect of mortality, rate of interest, expenses and bonus loading.***

(2) After the 31st day of December, 1950, no insurer shall, in respect of life insurance business transacted by him in India, spend as expenses of management in any calendar year an amount in excess of the prescribed limits and in prescribing any such limits regard shall be had to the size and age of the insurer and the provision generally made for expenses of management in the premium rates of insurers:

Provided that where an insurer has spent as such expenses in any year an amount in excess of the amount permissible under this sub-section, he shall not be deemed to have contravened the provisions of this section, if the excess amount so spent is within such limits as may be fixed in respect of the year by the Controller after consultation with the Executive Committee of the Life Insurance Council constituted under section 64F, by which the actual expenses incurred may exceed the expenses permissible under this sub-section.

(3) In respect of any statement mentioned in sub-section (1), the Controller may require that it shall be submitted to another actuary appointed by the insurer for the purpose and approved by the Controller, for certification by him whether with or without modifications

* * * * *

(4) Every insurer transacting life insurance business in India shall incorporate in the revenue account—

(a) a certificate signed by the chairman and two directors and by the principal officer of the insurer, and an auditor's certificate, certifying that all expenses of management in respect of life insurance business transacted by the insurer in India have been fully debited in the revenue account as expenses; and

(b) if the insurer is carrying on any other class of insurance business in addition to life insurance business an auditor's certificate certifying that all charges incurred in respect of his life insurance business and in respect of his business other than life insurance business have been fully debited in the respective revenue accounts

Explanation.—In this section,—

(a) "calendar year" or "year" means, in relation to an insurer who is required to furnish returns in accordance with sub-section (2) of section 16, the period covered by the revenue account furnished by such insurer under clause (b) of that sub-section;

(b) "expenses of management" means all charges wherever incurred whether directly or indirectly, and includes—

(i) commission payments of all kinds,

(ii) any amount of expenses capitalised,

(iii) in the case of an insurer having his principal place of business outside India, a proper share of head office expenses which

shall not be less than such percentage as may be prescribed of the total premiums (less reinsurances) received during the year in respect of life insurance business transacted by him in India, but does not include in the case of an insurer having his principal place of business in India any share of head office expenses in respect of life insurance business transacted by him outside India.

40C. Limitation of expenses of management in general insurance business.—(1) After the 31st day of December, 1949, no insurer shall, in respect of any class of general insurance business transacted by him in India, spend in any calendar year as expenses of management including commission or remuneration for procuring business an amount in excess of the prescribed limits and in prescribing any such limits regard shall be had to the size and age of the insurer:

Provided that where an insurer has spent as such expenses in any year an amount in excess of the amount permissible under this sub-section, he shall not be deemed to have contravened the provisions of this section, if the excess amount so spent is within such limits as may be fixed in respect of the year by the Controller after consultation with the Executive Committee of the General Insurance Council constituted under section 64F, by which the actual expenses incurred may exceed the expenses permissible under this sub-section.

(2) Every insurer as aforesaid shall incorporate in the revenue account a certificate signed by the chairman and two directors and by the principal officer of the insurer, and by an auditor certifying that all expenses of management wherever incurred, whether directly or indirectly, in respect of the business referred to in this section, have been fully debited in the revenue account as expenses.

Explanation.—In this section,—

(a) "calendar year" shall have the meaning assigned to it in section 40B;

(b) "expenses of management" means all charges, wherever incurred whether directly or indirectly, including commission payments of all kinds and, in the case of an insurer having his principal place of business outside India, a proper share of head office expenses, which shall not be less than such percentage as may be prescribed, of his gross premium income (that is to say, the premium income without taking into account premiums on reinsurance ceded or accepted) written direct in India during the year;

(c) "insurance business transacted in India" includes insurance business, wherever effected, relating to any property situate in India or to any vessel or aircraft registered in India."

32. Amendment of section 42, Act IV of 1938.—In section 42 of the said Act,—

(a) in sub-section (1), for the words "three rupees", the words "ten rupees" shall be substituted;

(b) in sub-section (2), the word "registered" shall be omitted;

(c) for sub-section (3), the following shall be substituted, namely:—

"(3) A licence issued under this section, after the commencement of the Insurance (Amendment) Act, 1950, shall remain in force for a

period of three years only from the date of issue, but shall, if the applicant does not suffer from any of the disqualifications mentioned in items (b), (c) and (d) of sub-section (4) and the application for renewal of the licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the prescribed fee which shall not be more than ten rupees, and an additional fee of a prescribed amount, not exceeding three rupees by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force:

(3A) No application for the renewal of a licence under this section shall be entertained if the application does not reach the issuing authority before the licence ceases to remain in force:

Provided that the Controller may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention of this sub-section on payment by the applicant of a penalty of fifty rupees."

33. Insertion of new sections 42A, 42B and 42C in Act IV of 1938.—After section 42 of the said Act, the following sections shall be inserted, namely:—

"42A. Registration of principal agents, chief agents and special agents.—

(1) The Controller or an officer authorised by him in this behalf shall, in the prescribed manner and on payment of the prescribed fee, which shall not be more than twenty-five rupees for a principal agent or a chief agent and ten rupees for a special agent, register any person who makes an application to him in the prescribed manner if,—

(a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or

(b) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications,

and a certificate to act as a principal agent, chief agent or special agent, as the case may be, for the purpose of procuring insurance business shall be issued to him.

(2) A certificate issued under this section shall entitle the holder thereof to act as a principal agent, chief agent or special agent, as the case may be, for any insurer.

(3) A certificate issued under this section shall remain in force for a period of twelve months only from the date of issue, but shall, on application made in this behalf, be renewed from year to year on production of a certificate from the insurer concerned that the provisions of clauses 2 and 3 of Part A of the Sixth Schedule in the case of a principal agent, the provisions of clauses 2 and 4 of Part B of the said Schedule in the case of a chief agent, and the provisions of clauses 2 and 3 of Part C of the said Schedule in the case of a special agent, have been complied with, and on payment of the prescribed fee which shall not be more than twenty-five rupees in the case of a principal agent or a chief agent, and ten rupees in the case of a special agent, and an additional fee of the prescribed amount not exceeding five rupees by way of penalty, in cases where the application for renewal of the certificate does not reach the issuing authority before the date on which the certificate ceases to remain in force:

Provided that, where the applicant is an individual, he does not suffer from any of the disqualifications mentioned in clauses (b) to (d) of sub-section (4) of section 42, and, where the applicant is a company or a firm, any of its directors or partners does not suffer from any of the said disqualifications.

(4) Where it is found that the principal agent, chief agent or special agent being an individual is, or being a company or firm contains a director or partner who is, suffering from any of the disqualifications mentioned in sub-section (4) of section 42, without prejudice to any other penalty to which he may be liable, the Controller shall, and where a principal agent, chief agent or special agent has contravened any of the provisions of this Act may, cancel the certificate issued under this section to such principal agent, chief agent or special agent.

(5) The authority which issued any certificate under this section may issue a duplicate certificate to replace a certificate lost, destroyed or mutilated on payment of the prescribed fee, which shall not be more than two rupees.

(6) Any person who acts as a principal agent, chief agent or special agent, without holding a certificate issued under this section to act as such, shall be punishable with fine which may extend to five hundred rupees, and any insurer or any person acting on behalf of an insurer, who appoints as a principal agent, chief agent or special agent any person not entitled to act as such or transacts any insurance business in India through any such person, shall be punishable with fine which may extend to one thousand rupees.

(7) Where the person contravening sub-section (6) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or any other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine which may extend to five hundred rupees.

(8) The provisions of sub-sections (6) and (7) shall not take effect until the expiry of six months from the commencement of the Insurance (Amendment) Act, 1950.

42B. Regulation of employment of principal agents.—(1) No insurer shall, after the expiration of seven years from the commencement of the Insurance (Amendment) Act, 1950, appoint, or transact any Insurance business in the States, through a principal agent.

(2) Every contract between an insurer *** and a principal agent shall be in writing *** and the terms contained in Part A of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract.

(3) No insurer shall, after the commencement of the Insurance (Amendment) Act, 1950, appoint any person as a principal agent except in a presidency-town unless the appointment is by way of renewal of any contract subsisting at such commencement.

(4) Within sixty days of the commencement of the Insurance (Amendment) Act, 1950, every principal agent shall file with the insurer concerned a full list of insurance agents employed by him indicating the terms of the contract between the principal agent and each of such insurance agents.

and, if any principal agent fails to file such a list within the period specified, any commission payable to such principal agent on premiums received from the date of expiry of the said period of sixty days until the date of the filing of the said list shall, notwithstanding anything in any contract to the contrary, cease to be so payable.

(5) A certified copy of every contract as is referred to in sub-section (2) shall be furnished by the insurer to the Controller within thirty days of his entering into such contract and intimation of any change in any such contract shall be furnished by the insurer with full particulars thereof to the Controller within thirty days of the making of any such change.

(6) If the commission due to any insurance agent in respect of any general insurance business procured by such agent is not paid by the principal agent for any reason, the insurer may pay the insurance agent the commission so due and recover the amount so paid from the principal agent concerned.

(7) Every contract as is referred to in sub-section (2), subsisting at the commencement of the Insurance (Amendment) Act, 1950, shall, with respect to terms regarding remuneration, be deemed to have been so altered as to be in accordance with the provisions of sub-section (4) of section 40A.

(8) If any dispute arises as to whether a person is or was a principal agent, the matter shall be referred to the Controller, whose decision shall be final.

(9) Every insurer shall maintain a register in which the name and address of every principal agent appointed by him, the date of such appointment and the date, if any, on which the appointment ceased shall be entered.

42C Regulation of employment of chief agents and special agents.—

(1) Every contract between an insurer carrying on life insurance business and a chief agent shall be in writing, and shall specify the area (not being less in extent than a district or the equivalent thereof) for which the chief agent is appointed, and the terms contained in Part B of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract.

(2) No chief agent shall, either directly or through insurance agents or special agents employed by or through him procure life insurance business for the insurer in any area outside the area for which he has been appointed or in any area for which another chief agent has been appointed or in any area in which the head office or any branch office of the insurer is operating, and neither the head office nor any branch office of the insurer shall operate in any area for which a chief agent has been appointed.

Provided that nothing in this sub-section shall be deemed to prohibit the head office of an insurer which had been operating at the commencement of the Insurance (Amendment) Act, 1950, for a period of not less than ten years before such commencement within the municipal limits of any town where the head office is situated, and a chief agent who, in pursuance of an agreement in writing had been operating for a similar period within such limits, from continuing to operate within the said limits.

Provided further that nothing in this sub-section shall be deemed to prohibit an insurance agent from procuring life insurance business in or

from any area and submitting the proposals direct to the principal office of the insurer in the States.

(3) Within sixty days of the commencement of the Insurance (Amendment) Act, 1950, every chief agent shall file with the insurer concerned a full list of the insurance agents employed by him, indicating the terms of the contract between the chief agent and each of such insurance agents and the business secured by each of such agents, and if * * * any chief agent fails to file such a list within the period specified, any commission payable to such chief agent on premiums received from the date of the expiry of the said period of sixty days until the date of the filing of the said list shall, notwithstanding anything in any contract to the contrary, cease to be so payable.

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(4) Every contract between an insurer carrying on life insurance business and a special agent, or between a chief agent of such insurer and a special agent, shall be in writing and the terms contained in Part C of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract.

(5) A certified copy of every contract as is referred to in sub-section (1) or sub-section (4) shall be furnished by the insurer or the chief agent to the Controller within thirty days of his entering into such contract, and intimation of any change in any such contract shall be furnished by the insurer or the chief agent with full particulars thereof to the Controller within thirty days of the making of any such change.

(6) No such contract as is referred to in sub-section (1) or sub-section (4) shall be entered into or renewed for a period exceeding ten years at any one time, and, notwithstanding the terms of any contract to the contrary, no option to renew any such contract given to any of the parties shall be enforceable without the consent of the other.

(7) Every contract between an insurer and a person acting on behalf of such insurer who, before the commencement of the Insurance (Amendment) Act, 1950, has been employing insurance agents for the purpose of life insurance business, which is subsisting on such commencement, shall terminate after the expiration of ten years from such commencement, if it does not terminate earlier:

Provided that every such contract shall be modified by the parties before the 1st day of January, 1951, to bring it into conformity with this Act, and any such modification shall—

(i) as respects remuneration, whether in respect of business already procured or in respect of business to be procured thereafter, be such as may be mutually agreed upon between the parties, subject, in the case of remuneration payable on business procured before such commencement, to a maximum of an over-riding commission of two and a half per cent plus a further commission not exceeding three and three-quarters per cent on premiums in respect of which no commission is payable to any insurance agent;

(ii) be deemed to include all the terms specified in Part B or Part C of the Sixth Schedule, as the case may be:

Provided further that, in the event of any dispute as to the terms of any fresh contract, the matter shall be referred to arbitration.

(3) Any such contract as is referred to in sub-section (7) which was subsisting on the 1st day of January, 1949, but has terminated or has been terminated before the commencement of the Insurance (Amendment) Act, 1950, shall be subject to the maximum limits specified in clause (i) of the proviso to sub-section (7) as respects remuneration, if any, payable on business procured before the termination of the contract.

(4) Nothing in this section shall be deemed to prevent any special agent from receiving any renewal commission on policies effected through him as an insurance agent at any time before his appointment as such special agent.

(5) If any dispute arises as to whether a person is or was a chief agent or a special agent for the purposes of this Act, the matter shall be referred to the Controller whose decision shall be final.

(6) Every insurer shall maintain a register in which the name and address of every chief agent appointed by him, the date on which the appointment was made and the date, if any, on which the appointment ceased shall be entered, and a separate register in which similar particulars relating to every special agent shall be entered, and every chief agent shall maintain a register in which similar particulars relating to every special agent appointed by him shall be entered."

34. Substitution of new section for section 44, Act IV of 1938.—For section 44 of the said Act, the following section shall be substituted, namely:—

"44. Prohibition of cessation of payments of commission.—(1) Notwithstanding anything to the contrary contained in any contract between any person and an insurance agent providing for the forfeiture or stoppage of payment of renewal commission to such insurance agent, no such person shall, in respect of life insurance business transacted in India, refuse payment to an insurance agent of commission due to him on renewal premium under the agreement by reason only of the termination of his agreement, except for fraud:

Provided that—

(a) such agent ceases to act for the insurer concerned after the Central Government has notified in the Official Gazette that it is satisfied that the circumstances in which the said insurer is placed are such as to justify the agents ceasing to act for him; or

(b) such agent has served the insurer continually and exclusively in respect of life insurance business for at least five years and policies assuring a total sum of not less than fifty thousand rupees effected through him for the insurer were in force on a date one year before his ceasing to act as such agent for the insurer, and that the commission on renewal premiums due to him does not exceed four per cent. in any case; or

(c) such agent has served the insurer continually and exclusively for at least ten years and after his ceasing to act as such agent he does not directly or indirectly solicit or procure insurance business for any other person.

Explanation.—For the purposes of this sub-section, service of an insurance agent under a chief agent of the insurer, whether before or after the commencement of the Insurance (Amendment) Act, 1950, shall be deemed to be service under the insurer.

(2) Any commission payable to an insurance agent under the provisions of clauses (b) and (c) of the proviso to sub-section (1) shall, notwithstanding the death of the agent, continue to be payable to his heirs for so long as such commission would have been payable had such insurance agent been alive.

35. Insertion of new section 44A in Act IV of 1938.—After section 44 of the said Act and before the heading “Special Provisions of Law”, the following section shall be inserted, namely:—

“44A. *Power to call for information*—For the purposes of ensuring compliance with the provisions of sections 40A, 40B, 40C, 42B and 42C the Controller may by notice—

(a) require from an insurer, principal agent, chief agent or special agent such information, certified if so required by an auditor or actuary, as he may consider necessary;

(b) require an insurer, principal agent, chief agent or special agent to submit, for his examination at the principal place of business of the insurer in the States, any book of account, register or other document, or to supply any statement which may be specified in the notice;

(c) examine any officer of an insurer or a principal agent, chief agent or special agent on oath, in relation to any such information, book, register, document or statement and administer the oath accordingly;

and an insurer, principal agent, chief agent or special agent shall comply with any such requirement within such time as may be specified in the notice.”

36. Amendment of section 47, Act IV of 1938.—In sub-section (1) of section 47 of the said Act, the words “before the expiry of nine months from the date of the maturing of the policy or where the circumstances are such that the insurer cannot be immediately aware of such maturing, from the date on which notice of such maturing is given to the insurer” shall be omitted.

37. Insertion of new section 47A in Act IV of 1938.—After section 47 of the said Act, the following section shall be inserted, namely:—

“47A. *Claims on small life insurance policies.*—(1) In the event of any dispute relating to the settlement of a claim on a policy of life insurance assuring a sum not exceeding two thousand rupees (exclusive of any profit or bonus not being a guaranteed profit or bonus) issued by an insurer in respect of insurance business transacted in India, arising between a claimant under the policy and the insurer who issued the policy or has otherwise assumed liability in respect thereof, the dispute may at the option of the claimant be referred to the Controller for decision, and the Controller may, after giving an opportunity to the parties to be heard and after making such further inquiries as he may think fit, decide the matter.

(2) The decision of the Controller under this sub-section shall be final and shall not be called in question in any Court, and may be executed by the Court which would have been competent to decide the dispute if it had

not been referred to the Controller as if it were a decree passed by that Court.

(3) There shall be charged and collected in respect of the duties of the Controller under this section such fees whether by way of percentage or otherwise as may be prescribed."

38. Amendment of section 48, Act IV of 1938.—In section 48 of the said Act,—

(i) in sub-section (1), after the words "directors of the company" the words "the number to be elected not being less than two in any case" shall be inserted;

(ii) for the second proviso to sub-section (2A), the following proviso shall be substituted, namely —

* * * * *

"Provided further that the Controller may exempt any director of a subsidiary company of the insurer from any disqualification imposed by this sub-section.;"

(iii) in clause (a) of sub-section (3), for the words "provisions of this sub-section" the words "provisions of this section" shall be substituted.

39. Amendment of section 48A, Act IV of 1938.—In section 48A of the said Act, for the words "no person acting on behalf of an insurer who, for the purpose of life insurance business employs insurance agents", the words "no chief agent or special agent" shall be substituted.

40. Insertion of new section 48B in Act IV of 1938.—After section 48A of the said Act, the following section shall be inserted, namely —

"48B. *Further provision regarding directors*—(1) An insurer specified in sub-clause (b) of clause (9) of section 2 and carrying on life insurance business shall not have a common director with another such insurer.

(2) The Central Government may, for such period, to such extent and subject to such conditions as it may specify, exempt from the operation of this section—

(a) any insurer, who is a subsidiary company of another insurer, or

(b) two or more insurers, for the purpose of facilitating their amalgamation or the transfer of business of one insurer to the other."

41. Amendment of section 49, Act IV of 1938.—(1) Section 49 of the said Act shall be renumbered as sub-section (1) thereof, and after the proviso to that sub-section, as so renumbered, the following further proviso shall be added, namely—

"Provided further that the share of any such surplus allocated to or reserved for the shareholders (including any amount for the payment of dividends guaranteed to them, whether by way of first charge or otherwise) shall not exceed seven and a half per cent of such surplus."

(2) After sub-section (1), as so renumbered, the following sub-section shall be inserted, namely:—

"(2) For the purposes of sub-section (1), the actual amount of income-tax deducted at source during the period following the date as at which the last preceding valuation was made and preceding the date as at which

the valuation in question is made may be added to such surplus after deducting an estimated amount for income-tax on such surplus, such addition and deduction being shown in paragraph 8(1) of the abstract prepared in accordance with Part II of the Fourth Schedule to this Act."

42. Insertion of new sections 52 A to 52 G in Act IV of 1938.—After section 52 of the said Act, the following heading and sections shall be inserted, namely:—

"MANAGEMENT BY ADMINISTRATOR.

52A. When Administrator for management of insurance business may be appointed—(1) If at any time the Controller has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, after giving such opportunity to the insurer to be heard as he thinks fit, make a report thereon to the Central Government.

(2) The Central Government, if it is of opinion after considering the report that it is necessary or proper to do so, may appoint an Administrator to manage the affairs of the insurer under the direction and control of the Controller.

(3) The Administrator shall receive such remuneration as the Central Government may direct and the Central Government may at any time cancel the appointment and appoint some other person as Administrator.

(4) The management of the business of the insurer shall as on and after the date of appointment of the Administrator vest in such Administrator, but except with the leave of the Controller the Administrator shall not issue any further policies.

(5) As on and after the date of appointment of the Administrator any person vested with any such management immediately prior to that date shall be divested of that management.

(6) The Controller may issue such directions to the Administrator as to his powers and duties as he deems desirable in the circumstances of the case, and the Administrator may apply to the Controller at any time for instructions as to the manner in which he shall conduct the management of the business of the insurer or in relation to any matter arising in the course of such management.

52B. Powers and duties of the Administrator.—(1) The Administrator shall conduct the management of the business of the insurer with the greatest economy compatible with efficiency and shall, as soon as may be possible, file with the Controller a report stating which of the following courses is in the circumstances most advantageous to the general interests of the holders of life insurance policies, namely:—

(a) the transfer of the business of the insurer to some other insurer;

(b) the carrying on of its business by the insurer (whether with the policies of the business continued for the original sum insured with the addition of bonuses that attach to the policies or for reduced amounts);

(c) the winding up of the insurer; or

(d) such other course as he deems advisable.

(2) On the filing of the report with the Controller, the Controller may take such action as he thinks fit for promoting the interests of the holders of life insurance policies in general.

(3) Any order passed by the Controller under sub-section (2) shall be binding on all persons concerned, and shall have effect notwithstanding anything in the memorandum or articles of association of the insurer, if a company.

52C. *Cancellation of contracts and agreements.*—The Administrator may, at any time during the continuance of his appointment with respect to an insurer and after giving an opportunity to the persons concerned to be heard, cancel or vary (either unconditionally or subject to such conditions as he thinks fit to impose) any contract or agreement (other than a policy) between the insurer and any other person which the Administrator is satisfied is prejudicial to the interests of holders of life insurance policies.

52D. *Termination of appointment of Administrator.*—If at any time, on a report made by the Controller in this behalf, it appears to the Central Government that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Central Government may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Central Government, again vest in the person in whom it was vested immediately prior to the date of appointment of the Administrator.

52E. *Finality of decision appointing Administrator.*—Any order or decision of the Central Government made in pursuance of section 52A or section 52D shall be final and shall not be called in question in any Court.

52F. *Penalty for withholding documents or property from Administrator.*—If any director or officer of the insurer or any other person fails to deliver to the Administrator any books of account, registers or any other documents in his custody relating to the business of the insurer the management of which has vested in the Administrator, or retains any property of such insurer, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

52G. *Protection of action taken under sections 52A to 52D.*—
(1) No suit, prosecution or other legal proceeding shall lie against an Administrator for anything which is in good faith done or intended to be done in pursuance of sections 52A to 52C inclusive.

(2) No suit or other legal proceeding shall lie against the Central Government or the Controller for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under section 52A, section 52B, or section 52D.”

43. Amendment of section 55, Act IV of 1938.—In section 55 of the said Act, for the words “Sixth Schedule”, wherever they occur, the words “Seventh Schedule” shall be substituted.

44. Amendment of section 64, Act IV of 1938.—To section 64 of the said Act, the following words shall be added, namely—

“and shall furnish to the Controller on or before the last day of January in every calendar year a certificate from an auditor to the effect that the said books of account, register and documents are being kept as required at the principal office of the insurer in India.”

45. Insertion of new sections 64A to 64T in Act IV of 1938.—After section 64 and before Part III, the following Part and sections shall be inserted, namely:—

"PART IIA.

**INSURANCE ASSOCIATION OF INDIA, COUNCILS OF THE ASSOCIATION AND
COMMITTEES THEREOF.**

64A. Incorporation of the Insurance Association of India.—(1) All insurers carrying on insurance business in the States at the commencement of the Insurance (Amendment) Act, 1950, all insurers who may after such commencement begin to carry on insurance business in the States, and, if the Central Government, by notification in the Official Gazette, so declares, all provident societies carrying on insurance business in the States on the date of such notification and all provident societies which may begin to carry on insurance business in the States after such date are hereby constituted a body corporate by the name of the Insurance Association of India.

(2) All insurers and provident societies incorporated or domiciled in the States shall be known as members of the Insurance Association of India, and all insurers and provident societies incorporated or domiciled elsewhere than in the States shall be known as associate members of that Association.

(3) The Insurance Association of India shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of all property, both movable and immovable and shall by the said name sue and be sued.

64B. Entry of names of members in the register.—(1) The Controller shall take or cause to be taken through such agency as he thinks fit such steps as may be necessary to have the names of all insurers and provident societies, who or which are entitled to have their names entered in the register of members and associate members of the Insurance Association of India maintained for this purpose entered therein.

(2) Where any insurer or provident society has ceased to carry on business as such, the Controller shall cause such steps to be taken as may be necessary to have the name of such insurer or provident society, as the case may be, removed from the register * * .

64C. Councils of the Insurance Association of India.—There shall be two Councils of the Insurance Association of India, namely:—

(a) the Life Insurance Council consisting of all the members and associate members of the Association who carry on life insurance business in the States, and

(b) the General Insurance Council consisting of all the members and associate members of the Association who carry on general insurance business in the States.

64D. Authority of members of Association to act through agents.—It shall be lawful for any member of the Life Insurance Council or the General Insurance Council to authorise any individual, whether an officer of the insurer or not, to act as the representative of such member at any meeting of the Council concerned or to stand as a candidate for any election held by that Council.

64E. Authorities of the Life Insurance Council and the General Insurance Council.—The authorities of the Life Insurance Council and the General Insurance Council shall be the Executive Committees, the Tariff Committee and the other Committees thereof constituted in the manner provided in this Part.

64F. Executive Committees of the Life Insurance Council and the General Insurance Council.—(1) The Executive Committee of the Life Insurance Council shall consist of the following persons, namely:—

(a) two officials nominated by the Central Government, one as the Chairman and the other as a member;

(b) eight representatives of members of the Insurance Association of India carrying on life insurance business elected in their individual capacity by the said members in such manner, from such groups of members and from such areas as may be specified by the Central Government;

(c) one non-official not connected with any insurance business, nominated by the Central Government; and

(d) five persons connected with insurance business, nominated by the Central Government for the purpose of representing such groups of insurers carrying on life insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the Life Insurance Council or for any other purpose.

(2) The Executive Committee of the General Insurance Council shall consist of the following persons namely:—

(a) two officials nominated by the Central Government, one as the Chairman and the other as a member;

(b) eight representatives of members of the Insurance Association of India carrying on general insurance business elected in their individual capacity by the said members in such manner, from such groups and from such areas as may be specified by the Central Government;

(c) one non-official not connected with any insurance business, nominated by the Central Government; and

(d) five persons connected with insurance business, nominated by the Central Government for the purpose of representing such groups of insurers carrying on general insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the General Insurance Council or for any other purpose.

(3) If any body of persons specified in sub-sections (1) and (2) fails to elect any of the members of the Executive Committees of the Life Insurance Council or the General Insurance Council, the Central Government may nominate any person to fill the vacancy, and any person so nominated shall be deemed to be a member of the Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, as if he had been duly elected thereto.

(4) No official nominated by the Central Government shall be entitled, whether as chairman or as a member, to vote in respect of any matter coming up before any meeting of the Executive Committee of the Life

Insurance Council or the Executive Committee of the General Insurance Council, as the case may be, and subject thereto each of the said Executive Committees may, with the approval of the Central Government, make bye-laws for the transaction of any business at any meeting of the said Committee, and any such bye-law may provide that any member of the Committee who is interested in any matter for the time being before that Committee may not be present at or take part in any meeting thereof.

* * * * *

(5) The Life Insurance Council or the General Insurance Council may form such other committees consisting of such persons as it may think fit to discharge such functions as may be delegated thereto:

Provided that any action taken by any of the said Councils under this sub-section shall be with the previous consent of the Central Government, and nothing in this sub-section shall derogate from any of the powers vested in the Executive Committees.

(6) The Secretary of the Executive Committee of the Life Insurance Council and of the Executive Committee of the General Insurance Council shall in each case be an official nominated by the Central Government.

64G. *Resignation and filling up of casual vacancies.*—(1) Any member of the Executive Committee of the Life Insurance Council or of the General Insurance Council may resign his membership of the Committee by notice in writing addressed to the Chairman of the Committee to that effect.

(2) Casual vacancies in the Executive Committee of the Life Insurance Council or of the General Insurance Council, whether caused by resignation, death or otherwise, shall be filled by nomination by the Central Government, and any person so nominated to fill the vacancy shall hold office until the dissolution of the Committee to which he has been nominated.

(3) No act of the Executive Committee of the Life Insurance Council or of the General Insurance Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Committee concerned.

64H. *Duration and dissolution of Executive Committees.*—(1) The duration of the Executive Committee of the Life Insurance Council or the General Insurance Council shall be three years from the date of its first meeting on the expiry of which it shall stand dissolved and a new Executive Committee constituted.

(2) Notwithstanding the dissolution of the Executive Committee of the Life Insurance Council or the General Insurance Council, the outgoing members thereof shall continue to hold office and discharge such administrative and other duties as may be prescribed until such time as a new Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, shall have been constituted.

64I. *Power of Executive Committee of Life Insurance Council to hold examinations for insurance agents.*—The Life Insurance Council may, with the approval of the Central Government, authorise its Executive Committee to hold examinations for individuals wishing to qualify themselves as insurance agents for the purpose of procuring life insurance business, and, if the Central Government, by notification in the Official

Gazette, so declares, then, notwithstanding anything contained in section 42, only individuals who have passed any such examination shall be eligible to apply for a licence under section 42:

Provided that nothing in this sub-section shall affect the right of any individual, who has been licensed to act as an insurance agent under section 42 before the date of such notification, to act as such, or to have his licence renewed from time to time.

64J. Functions of Executive Committee of Life Insurance Council.—

(1) The functions of the Executive Committee of the Life Insurance Council shall be—

(a) to aid, advise and assist insurers carrying on life insurance business in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of life insurance policies;

(b) to render advice to the Controller in the matter of controlling the expenses of insurers in respect of their life insurance business in India;

(c) to bring to the notice of the Controller the case of any insurer acting in a manner prejudicial to the interests of holders of life insurance policies;

(d) to act in any matter incidental or ancillary to any of the matters specified in clauses (a) to (c) as, with the approval of the Central Government, may be notified by the Life Insurance Council in the *Gazette of India*.

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of the Life Insurance Council may collect such sums of money, whether by way of fees or otherwise, as may be prescribed from all members and associate members of the Insurance Association of India who carry on life insurance business.

64K. Executive Committee of Life Insurance Council may advise in controlling expenses.—(1) It shall be the duty of the Executive Committee of the Life Insurance Council to meet at least once before the 31st day of March every year to advise the Controller in fixing under the proviso to sub-section (2) of section 40B the limits by which the actual expenses incurred by an insurer carrying on life insurance business in respect of such business in the preceding year may exceed the limits prescribed under that sub-section, and in fixing any such limits the Controller shall have due regard to the conditions obtaining in life insurance business generally during that year, and he may fix different limits for different groups of insurers.

(2) Where an insurer is guilty of contravening the provisions of section 40B with respect to the expenses of management, the Controller may, after giving the insurer an opportunity of being heard, administer a warning to the insurer.

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(3) Where within a period of seven years two warnings have been given to an insurer under sub-section (2) and they have been disregarded by him, the Controller may cause an investigation and valuation, as at such date as the Controller may specify, to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Controller, and the insurer shall place at the disposal of

the said actuary all the materials required by him for the purpose of such investigation and valuation, within such period, not being less than three months, as the Controller may specify.

(4) The provisions of sub-sections (1) and (4) of section 18 and of sub-sections (1) and (2) of section 15, or, as the case may be, of sub-section (2) of section 16 shall apply in relation to an investigation and valuation under this section:

Provided that the abstract and statement prepared as the result of such investigation and valuation shall be furnished by such date as the Controller may specify.

(5) There shall be appended to every such abstract a statement signed by the actuary giving such information as may be prescribed.

(6) On receipt of the abstract and statement furnished in accordance with sub-section (4), the Controller may take such action as may be prescribed.

64L. Functions of Executive Committee of General Insurance Council

—(1) The functions of the Executive Committee of the General Insurance Council shall be—

(a) to aid and advise insurers, * * * carrying on general insurance business, in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of policies of general insurance;

(b) to render advice to the Controller in the matter of controlling the expenses of such insurers carrying on business in India in the matter of commission and other expenses;

(c) to bring to the notice of the Controller the case of any such insurer acting in a manner prejudicial to the interests of holders of general insurance policies * * *;

(d) to act in any matter incidental or ancillary to any of the matters specified in clauses (a) to (c) as with the approval of the Central Government may be notified by the General Insurance Council in the *Gazette of India*.

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of the General Insurance Council may collect such fees as may be prescribed from all insurers carrying on general insurance business.

64M. Executive Committee of General Insurance Council may advise in controlling expenses.—(1) It shall be the duty of the Executive Committee of the General Insurance Council to meet at least once before the 31st day of March every year to advise the Controller in fixing under the proviso to sub-section (1) of section 40C the limits by which the actual expenses of management incurred by an insurer carrying on general insurance business in respect of such business in the preceding year may exceed the limits prescribed under that sub-section, and in fixing any such limits the Controller shall have due regard to the conditions obtaining in general insurance business in the preceding year, and he may fix different limits for different groups of insurers.

(2) Where an insurer is guilty of contravening the provisions of section 40C with respect to the expenses of management the Controller

may, after giving the insurer an opportunity of being heard, administer a warning to the insurer.

* * * * *

(3) Where in any case two warnings given to an insurer under sub-section (2) have been disregarded by him, the Controller may take such action against the insurer as may be prescribed.

64N. Power of the Executive Committees to act together in certain cases—The Central Government may prescribe the circumstances in which, the manner in which, and the conditions subject to which, the Executive Committee of the Life Insurance Council and the Executive Committee of the General Insurance Council may hold joint meetings for the purpose of dealing with any matter of common interest to both Committees, and it shall be lawful for the two Committees at any such joint meeting to delegate any matter under consideration for the determination of a sub-committee appointed for this purpose from amongst the members of the two Committees.

64O. Power of General Insurance Council to regulate rates of insurance, etc.—(1) The General Insurance Council may, by regulations made in this behalf and approved by the Central Government, control and regulate the rates, advantages, terms and conditions that may be offered by its members and associate members in respect of general insurance business, and all such regulations shall be binding on all its members.

(2) Any regulations made under sub-section (1) may delegate to a Tariff Committee, appointed for such period and consisting of such persons as may be specified in such regulations, any power of control and regulation vested in the General Insurance Council.

(3) Where an insurer is guilty of contravening any regulation made under sub-section (1) by which he is bound, the Tariff Committee, if any, appointed under sub-section (2) may take such disciplinary action against him as may be prescribed.

(4) The Central Government may prescribe the cases in which an appeal shall lie in respect of any action taken under sub-section (3), and any such appeal shall be preferred to the Central Government within thirty days of the date on which such action was taken.

(5) The General Insurance Council shall meet at least once a year to review the work done by the Tariff Committee appointed under sub-section (2).

(6) For the purpose of enabling the Tariff Committee to effectively discharge its functions under this section, the General Insurance Council may, by regulations made in this behalf and approved by the Central Government, fix the amount of fees payable by insurers carrying on general insurance business, and the Tariff Committee appointed under sub-section (2) may collect such fees either directly or through Regional Councils constituted as hereinafter provided.

Explanation.—For the purposes of section 64O, section 64P and section 64Q, the Central Government may, by notification in the Official Gazette, specify that any insurer or class of insurers, shall not be deemed to be included amongst insurers carrying on general insurance business, and any insurer so specified shall not take part in any meeting of the General Insurance Council in which any discussion of any matter dealt with in the said sections takes place.

64P. Regional Councils.—(1) The General Insurance Council may constitute such Regional Councils as and when it deems fit for one or more of the prescribed regions.

(2) Each Regional Council shall consist of seven persons elected by such groups of insurers carrying on general insurance business in the region as may be prescribed.

64Q. Functions of the Regional Councils.—(1) The Regional Councils shall perform such functions as may be delegated to them by the General Insurance Council.

(2) For the purpose of enabling it effectively to discharge its duties any Regional Council may in the prescribed manner constitute such Committees thereof as it may think fit, whether consisting of members of the Regional Council or otherwise.

(3) Where in the exercise of any functions delegated to it under this section, any Regional Council or any Committee thereof restrains a principal agent or an insurance agent from procuring or causing to be procured general insurance business from any area, any such principal agent or insurance agent may appeal to the Central Government within such time as may be prescribed and the Central Government may pass such orders thereon as it thinks fit.

64R. General powers of Life Insurance Council and General Insurance Council.—(1) For the efficient performance of its duties, the Life Insurance Council or the General Insurance Council, as the case may be, may—

(a) appoint such officers and servants as may be necessary and fix the conditions of their service;

(b) determine the manner in which any prescribed fee may be collected;

(c) keep and maintain up to date a copy of the list of all insurers who are members or associate members of the Insurance Association of India;

(d) with the previous approval of the Central Government, make regulations for—

(i) the holding of elections other than the first elections;

(ii) the summoning and holding of meetings, the conduct of business therat and the number of persons necessary to form a quorum;

(iii) the submission by insurers to the Executive Committee of the Life Insurance Council or the General Insurance Council of such statements or information as may be required of them and the submission of copies thereof by the insurers to the Controller;

(iv) the levy and collection of any fees;

(v) the regulation of any other matter which may be necessary for the purpose of enabling it to carry out its duties under this Act.

(2) The Life Insurance Council or the General Insurance Council may authorise the Executive Committee concerned or the Tariff Committee appointed under section 64O to exercise any of the powers conferred on the Life Insurance Council or the General Insurance Council, as the case may be under clause (a), clause (b) or clause (c) of sub-section (1).

64S. Power of Central Government to remove difficulties.—The Central Government may exercise such powers as may be necessary for bringing the Life Insurance Council, the General Insurance Council or the Executive Committee of any of the said Councils, as the case may be, into effective existence for the purposes of this Part, and any such powers shall include—

(a) the power to hold, in such manner as may be directed by the Central Government, the first elections to the Executive Committees of the Life Insurance Council and the General Insurance Council;

(b) where a notification under sub-section (1) of section 64A has been issued declaring provident societies to be members of the Insurance Association of India, the power to associate provident societies effectively in the exercise of all powers and the discharge of all functions of the Life Insurance Council and the Executive Committee thereof;

(c) the power to make the provisions of section 40B applicable to the provident societies specified in clause (b) in the same manner as they apply to insurers.

64T. Power to exempt.—The Central Government may, subject to such conditions and restrictions as it may think fit to impose, exempt any insurer specified in sub-clause (c) of clause (9) of section 2 from the operation of all or any of the provisions of this Part."

46. Amendment of section 65, Act IV of 1938.—In sub-section (1) of section 65 of the said Act, for the words "nine hundred" the words "one thousand" shall be substituted.

47. Insertion of new section 65A in Act IV of 1938.—After section 65 of the said Act, the following section shall be inserted, namely:—

"65A. Prohibition of transaction of insurance business by provident societies other than public companies or co-operative societies.—No person shall, after the commencement of the Insurance (Amendment) Act, 1950, begin to carry on in the States any business specified in sub-section (1) of section 65, and no provident society carrying on any such business in the States shall, after the expiry of one year from such commencement, continue to carry on any such business, unless he or it is—

(a) a public company, or

(b) a society registered under the Co-operative Societies Act, 1912 (II of 1912) or under any other law for the time being in force in any State relating to co-operative societies, or

(c) a body corporate incorporated under the law of any country * * * outside India not being of the nature of a private company."

48. Omission of section 68, Act IV of 1938.—Section 68 of the said Act shall be omitted.

49. Amendment of section 70, Act IV of 1938.—In section 70 of the said Act,—

(1) in sub-section (3), for the figures "67" the figures and letter "65A, 67" shall be substituted;

(2) in sub-section (4),—

(i) at the end of sub-clause (ii) of clause (a), the word "or" shall be inserted;

(ii) clause (b) shall be omitted; and

(iii) after clause (a) of the second proviso, the following clause shall be inserted, namely:—

“(aa) cancel the registration of a provident society if any deposit required by section 78, has not been made, or”.

50. Amendment of section 71, Act IV of 1938.—In section 71 of the said Act,—

(i) for the words, figures and letter “sections 20, 32, 46 and 58A” the words, figures, brackets and letters “sub-sections (2) and (3) of section 10, section 20, sub-section (1) of section 27, sections 27A, 28, 29, 81A, 81B, 82, 46 and 58A” shall be substituted;

(ii) after the words “members of a provident society” the words and figures “and references to section 7 or section 98 shall be construed as references to section 78” shall be inserted.

51. Amendment of section 82, Act IV of 1938.—To sub-section (2) of section 82 of the said Act, the following proviso shall be added, namely:—

“Provided that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such return by a period not exceeding three months.”

52. Amendment of section 85, Act IV of 1938.—In section 85 of the said Act, sub-section (1) shall be omitted.

53. Amendment of section 91, Act IV of 1938.—In sub-section (1) of section 91 of the said Act,—

(i) the word “and” at the end of clause (f) shall be omitted; and
(ii) after clause (g) the following clause shall be inserted, namely.—

“(h) to sell the immovable and movable property of the society by public auction or private contract, with power to transfer the whole thereof to any person or society or to sell the same in parcels.”

54. Amendment of section 92, Act IV of 1938.—In section 92 of the said Act,—

(1) in sub-section (4),—

(i) for the words “the Superintendent of Insurance shall appoint a suitable person”, the words “the Controller may, if he thinks fit, appoint a suitable person” shall be substituted; and

(ii) for the words “and if so desired, shall also appoint a committee of inspection”, the words “and if he considers it desirable, may also appoint a committee of inspection” shall be substituted;

(2) in sub-section (11), after the words “forwarded by the liquidator”, the words “within one week after the meeting” shall be inserted.

55. Amendment of section 94, Act IV of 1938.—In section 94 of the said Act, sub-section (2) shall be omitted.

56. Amendment of section 98A, Act IV of 1938.—In section 98A of the said Act, the words, figures and brackets “so however that in such application the references in the second proviso to sub-section (1) of the said section to the commencement of this Act shall be construed as references to the commencement of the Insurance (Amendment) Act, 1946” shall be omitted.

57. Amendment of section 100, Act IV of 1938.—In section 100 of the said Act, for the words “publish such notices or documents” the words “publish such notice together with a summary in the prescribed form of the balance-sheet and revenue account” shall be substituted.

58. Amendment of section 102, Act IV of 1938.—In section 102 of the said Act,—

(i) for sub-section (1), the following shall be substituted, namely:—

“(1) Except as otherwise provided in this Act, any insurer, principal agent, chief agent, or special agent, who makes default in complying with, or acts in contravention of, any requirement of this Act, or of any rule or order made thereunder and, where the insurer is a company, any director, managing agent, manager or other officer of the company, or where the insurer is a firm, any partner of the firm who is knowingly a party to the default or contravention, shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing default or contravention with an additional fine which may extend to five hundred rupees for every day during which the default or contravention continues.”;

(ii) in sub-section (2), for the words “any of the requirements of this Act” the words “any requirement of this Act or of any rule or order made thereunder” shall be substituted.

59. Insertion of new section 110C in Act IV of 1938.—After section 110B of the said Act, the following section shall be inserted, namely:—

“110C. *Power to call for information.*—(1) The Controller may, by notice in writing, require any insurer to supply him with any information relating to his insurance business, and the insurer shall comply with such requirement within such period after receipt of the notice as may be specified therein.

(2) Any information supplied under this section shall be certified by a principal officer of the insurer and if the notice so requires also by an auditor.”

60. Amendment of section 116, Act IV of 1938.—In sub-section (1) of section 116 of the said Act,—

(i) for the words “a Part B State” the words “any country or State outside * * * India” shall be substituted, and

(ii) the proviso shall be omitted.

61. Amendment of section 116A, Act IV of 1938.—To the proviso to section 116A of the said Act, after the words and figures “of section 28”, the words, figures, brackets and letters “or section 28A, or the statements referred to in sub-section (2) of section 31B or section 40B” shall be added.

62. Amendment of section 118, Act IV of 1938.—In section 118 of the said Act, at the end of clause (b), the word “or” shall be inserted and after that clause, the following clause shall be added, namely:—

“(c) any approved superannuation fund as defined in clause (a) of section 58N of the Indian Income-tax Act, 1922 (XI of 1922).”

63. Amendment of the First Schedule, Act IV of 1938.—In the First Schedule to the said Act,—

(i) in Part I, in clause (c) of regulation 7, for the words “a certificate signed by” and the words “parts of the assets”, the words “where the

balance sheet relates either wholly or in part to life insurance business, a certificate signed by" and the words "part of the assets" shall respectively be substituted;

(ii) in Form A, in the first column, for the item "Life Insurance Fund" the following shall be substituted, namely:—

"Life Insurance Fund—

(i) Business in India.

(ii) Business outside India".

64. Amendment of the Third Schedule, Act IV of 1938.—In the Third Schedule to the said Act,—

(1) in Part I, after regulation 7, the following regulation shall be inserted, namely:—

"7A. In addition to the revenue account, information shall also be supplied of the gross claims payable directly by the insurer in India (that is to say, the claims without taking into account claims on reinsurance ceded or accepted) separately for fire, marine and miscellaneous insurance business and the provisions of sections 20 and 116A shall not apply to any information so supplied.;"

(2) in Part II, in Form F,—

(a) in the first column, for the item "Commission" the following items shall be substituted, namely:—

"Commission on direct Business.....

Commission on Reinsurances accepted.";

(b) in the third column, before the item "Other Income (to be specified)", the following item shall be inserted, namely:—

"Commission on Reinsurances ceded....."

65. Insertion of new Schedule in Act IV of 1938.—In the said Act, the "Sixth Schedule" shall be renumbered as the "Seventh Schedule", and before that Schedule as so renumbered, the following Schedule shall be inserted, namely:—

"THE SIXTH SCHEDULE

PART A

[See section 42B(1)]

Terms deemed to be included in every contract between an insurer carrying on general insurance business and a principal agent

1. All payments of commission to insurance agents shall be made by the principal agent on behalf of the insurer.

2. The principal agent shall procure or cause to be procured through insurance agents such an amount of general insurance business of any class for the procurement of which he has been appointed, as will yield a gross premium income of not less than twenty thousand rupees in each calendar year.

3. In the event of the principal agent failing in any calendar year to comply with the requirements of clause 2, he shall forfeit to the insurer—

(i) one-quarter of the total remuneration payable to him by the insurer for that year, if the class of business for the procurement of which he has been appointed is fire or miscellaneous insurance business, or

(ii) one-third of the total remuneration payable to him by the insurer for that year, if the class of business for the procurement of which he has been appointed is marine insurance business.

4. In the event of the principal agent failing to comply with the requirements of clause 2 in any two successive calendar years, the contract shall, without prejudice to the provisions of clause 3, terminate on the 31st day of March immediately following the second calendar year.

5. Except in cases where the business relates to any property under his immediate control, a principal agent shall not by himself procure any class of general insurance business without utilising the services of an insurance agent.

PART B

[See section 42C (1)]

Terms deemed to be included in every contract between an insurer carrying on life insurance business and a chief agent

1. All payments of commission to insurance agents shall be made by the insurer direct or by the chief agent, who may make the payment either directly or through a special agent on behalf of the insurer.

2. The chief agent shall employ or cause to be employed for and on behalf of the insurer either directly or through special agents at least six insurance agents in cases where the business in force of the insurer is less than one crore of rupees and in any other case at least twelve agents each of whom will procure in each calendar year new business amounting to not less than ten thousand rupees.

3. Save as provided in respect of cases specified in clause 7 of this Part, the remuneration payable to the chief agent in respect of life insurance business effected through him for the insurer shall only be in the form of an overriding commission.

4. In the event of the chief agent failing in two successive calendar years to comply with the requirements of clause 2, he shall forfeit to the insurer one-half of the total remuneration payable to him by the insurer for those years.

5. In the event of the chief agent failing to comply with the requirements of clause 2 in four successive calendar years, the contract shall, without prejudice to the provisions of clause 4, terminate on the 31st day of March immediately following the last of such calendar years.

6. Not more than one intermediary to be remunerated by the insurer concerned, whether on a salary basis or by way of commission, shall be employed between the chief agent and any insurance agent, but the chief agent may employ as many persons as he thinks fit on a salary basis, provided such salaries are paid out of his overriding commission.

7. In cases where the commission payable on a policy of life insurance effected through an insurance agent working under a chief agent is stopped *** on or after the 1st day of January, 1949 and not paid to the insurance agent, an amount not exceeding one-quarter of such commission payable to the insurance agent concerned shall also be payable to the chief agent, if he continues to render service in connection with that policy and if such commission is otherwise payable to him.

PART C

[See section 42C (4)]

Terms deemed to be included in every contract between an insurer carrying on life insurance business and a special agent or between a chief agent and a special agent

1. All payments of commission to insurance agents shall be made by the insurer direct or, on behalf of the insurer, either by the chief agent under whom the special agent is working or by the special agent.

2. The special agent shall employ at least two insurance agents and shall procure or cause to be procured through insurance agents employed under him in each calendar year new business amounting to not less than fifty thousand rupees assured on which at least the first year's premiums have been paid in full.

3. In the event of the special agent failing in any calendar year to comply with the requirements of clause 2, he shall forfeit to the insurer fifty per cent. of the total remuneration payable to him by the insurer, or, as the case may be, by the chief agent, for that year.

4. In the event of the special agent failing to comply with the requirements of clause 2 in two successive calendar years, the contract shall, without prejudice to the provisions of clause 8 of this Part terminate on the 31st day of March immediately following the second calendar year.

5. In the event of the special agent procuring life insurance business without utilising the services of an insurance agent, the special agent shall be entitled only to the commission that is ordinarily payable in respect of business so procured to an insurance agent.

6. The remuneration payable to the special agent in respect of policies of life insurance procured by him through insurance agents shall only be in the form of an overriding commission.

Explanation.—In this Schedule "business in force" means the total sum assured with bonuses, without taking into account reinsurances, ceded or accepted, by an insurer in respect of the whole of the life insurance business on the last working day of the calendar year or the period covered by the revenue account furnished by such insurer under clause (b) of sub-section (2) of section 18, as the case may be, preceding the calendar year in question."

66. Repeals and savings.—(1) The Insurance (Amendment) Ordinance, 1950 (VI of 1950), is hereby repealed.

(2) If immediately before the commencement of the Insurance (Amendment) Act, 1950, there is in force in any Part B State to which the Insurance Act, 1938 (IV of 1938), now extends any law corresponding to that Act, that law also shall stand repealed.

(3) Notwithstanding the repeal by this Act of the Insurance (Amendment) Ordinance, 1950, or of any law corresponding to the Insurance Act, 1938 (IV of 1938), in force in any Part B State, anything done or any action taken in the exercise of any power conferred by that Ordinance or law shall be deemed to have been done or taken in the exercise of the powers conferred by this Act, and any penalty incurred or proceeding commenced under that Ordinance or law shall be deemed to be a penalty incurred or proceeding commenced under the Insurance Act, 1938, as if that Act, as now amended, were in force on the day on which such thing was done, action taken, penalty incurred or proceeding commenced.

The following Report of the Select Committee on the Bill to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April, 1950, was presented to Parliament on the 27th March, 1950:—

WE, the undersigned, members of the Select Committee to which the Bill to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April, 1950 was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

Clause 2 and the First Schedule.—In view of the fact that some relief has already been given in the Finance Bill to the higher income groups, we have carefully considered the possibility of giving some relief to those at the other end. We have come to the conclusion that the exemption limit for the levy of income-tax should be raised from Rs. 3,000 to Rs. 3,600 in the case of individuals, unregistered firms and associations, and from Rs. 6,000 to Rs. 7,200 in the case of Hindu undivided families. The provision in paragraph A of Part I of the First Schedule has been amended accordingly.

Clause 4.—We have made certain amendments in the revised Items Nos. 75, 75(1) and 75(3) proposed in sub-clause (a) of this clause to clarify the meaning of the expression "imported complete". A note has also been added to make it clear that motor vehicles imported otherwise than in a completely assembled condition will be dutiable under the appropriate new Item No 75 (9), 75 (10) or 75(11). A few minor and formal amendments have been made in the last mentioned Items.

We recognise that these increases in import duties on motor vehicles, and parts and accessories, are necessary for encouraging indigenous production; but at the same time, we are anxious that prices, particularly of motor lorries and trucks, are not allowed to rise unduly. We therefore strongly recommend that suitable steps should be taken to keep prices under control.

Clause 8.—We consider that some relief should be given to the smaller match factories and the cottage match factories in the matter of excise duty. We have accordingly proposed that in the case of cottage factories, i.e., those producing less than 100 gross boxes per day, the duty should be reduced from Rs. 2-14-0 to Rs. 2-13-0 per gross boxes of 60s and from Rs. 1-15-0 to Rs. 1-14-0 per gross boxes of 40s. In the case of the middling factories the reduction proposed is from Rs. 2-15-0 to Rs. 2-14-6 and from Rs. 1-15-6 to Rs. 1-15-0 respectively.

Clause 13.—It has been brought to our notice that some old business profits tax assessments under the State law are still pending in the State of Hyderabad. In order that all such proceedings in that and other Part B States may be completed under the existing State laws, we have amended sub-clause (1) of clause 13 so as to cover laws relating to tax on profits of business.

The Fourth Schedule.—A substantive provision has been added in the Sea Customs Act, 1878, as section 3A thereof, empowering the Central Government to define the customs frontiers of India by a notification. This is necessary because, while entry 19 of List I in the Seventh Schedule to the Government of India Act, 1935, expressly gave that power to the Government, the corresponding entry 41 of the Union List in the Constitution merely mentions "definition of customs frontiers". Amendments of a formal character have been proposed in section 18 of this Act consequential upon its *proprio vigore* extension to Part B States.

2. The Bill was published in Part V of the Gazette of India, dated the 11th March, 1950

3. We think that the Bill has not been so altered as to require circulation under Rule 77(4) of the Rules of Procedure and Conduct of Business, and we recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR
 JOHN MATTHAI
 *M. V. RAMA RAO
 SURENDRANATH BURAGOHAIN
 G. DURGABAI
 *THAKUR DAS BHARGAVA
 V. C KESAVA RAO
 *BISWANATH DAS
 BALI RAM BHAGAT
 T. A. RAMALINGAM CHETTIAR
 K. HANUMANTHAIYA
 M. L. GAUTAM
 GOKULBHAI DAULATRAM BHATT
 *AJIT PRASAD JAIN
 B. L. SONDHI
 R. K. SIDHVA
 JASPAT ROY KAPOOR
 L. K. MAITRA
 SYAMNANDAN SAHAY
 HUKAM SINGH
 U. SRINIVASA MALLAYYA
 P. D. HIMATSINGKA

NEW DELHI.

The 27th March 1950

MINUTES OF DISSENT.

I

I am not convinced that the increased duties on imported automobile components, however well conceived in the interests of protecting the Indian Automobile Industry, are conceived in the best interests of the nation. The increased cost of transport which follows from the levy of these high rates of duty will necessarily be passed on to the consumer by those who operate transport service. The result will be that persons who use road-transport services for travelling will be required to pay an unreasonably higher fare per mile and consumers of goods which require to be distributed by road-transport will have to pay more for essential commodities. Another result will be that the increased cost of trucks will eliminate a considerable number of persons who operate transport services at present from such business by reason of increased outlay on the purchase as well as maintenance of vehicles necessitated by increased

* Subject to a Minute of Dissent.

duties. All this will ultimately lead to worsening of the road-transport facilities in the country which are even now hopelessly inadequate. While it is just possible that the levy of these high duties will operate to restrict imports of components such as are expected to be "produced in India within a year or two" thereby protecting the Indian Automobile Industry, I consider that the same object could be achieved by deliberately reducing imports of such components by judicious operation of import control machinery as well as by reducing monetary exchange which is applied to the purchase of these components. I also consider that even if Government devise measures to check the undue rise in the prices of trucks by resorting to fixation of maximum selling prices, they will inevitably tend to create a blackmarket in automobiles. The remedy will worsen the disease. It is not clear why those unreasonably high rates of duty should be proposed to be levied without considering what the Tariff Board might have to say in the matter of protecting the Indian Automobile Industry. I therefore consider that this is not so much a protective as a revenue duty. And the increased duty is not at all reasonable.

M. V. RAMA RAO.

NEW DELHI,
The 27th March, 1950

II

The Hindu Undivided Family is indebted to the Select Committee and the Hon'ble Finance Minister for accepting the logical increase from 6,000 to 7,200- in regard to families which have got two members.

Even in regard to Hindu Undivided Families which have two members only the justice has not been fully meted out. But in regard to such families as have more than two members no relief has been given and also in the case of super-tax relief has not been given to such Hindu Undivided Families even as have only 2 members.

Last year only a gesture was made and it was hoped that in the coming years justice will be done to such Hindu Undivided Families but owing to financial stringency nothing substantial has been done to give the justice so long overdue.

The solution only lies in not assessing the Hindu Undivided Family as such and until this is done if palliatives must be resorted to they should be substantial palliatives.

TIKAKUR DAS BHARGAVA.

NEW DELHI;
The 27th March, 1950.

III

It is with considerable hesitation that I have to record this note.

2. Under the present law—item 75(1)—articles other than rubber tyres, tubes and batteries, adapted for use as parts and accessories of motor cars are liable to pay an *ad valorem* duty of 60 per cent (U.S.A.) and 54 per cent (U.K.). The rest of the parts and accessories of motor vehicles (excluding tyres, tubes and batteries) are liable to pay 30 per cent. *ad valorem* (U.S.A.) and 21 per cent. *ad valorem* (U.K.).

3. Under the proposed tariff the distinction between parts and accessories (adapted for use for motor cars and other motor vehicles) has been done away

with The parts and accessories of motor vehicles have been classified into three classes as follows —

I	The following articles adapted for use as parts and accessories of motor vehicles other than motor cycles and motor scooters	Pref 60% <i>ad val</i>	Rev 54% <i>ad val</i>
(i)	The following engine components Caskets rubber mountings hose pipes other than brake hose pipes fuel pump etc		
(ii)	The following frame and body components carpets, cushion springs, etc etc		
II	The following articles adapted for use as parts and accessories of motor vehicles other than motor cycles and motor scooters	Pref 90% <i>ad val</i>	Rev 84% <i>ad val</i>
(i)	the following engine components brakes hose pipes crank shafts etc etc		
(ii)	the following electrical components starting motor generator etc etc		
(iii)	the following transmission and suspension components Ball roller bearings front and rear spring etc etc		
(iv)	the following body and frame components bolts nuts and screws, seat runners etc etc		
III	Articles (other than rubber tyres, tubes etc) Parts of mechanically propelled vehicles and accessories not otherwise specified	Pref 30% <i>ad val</i>	Rev 24% <i>ad val</i>

4 As a result, parts mentioned in Article 75(10) will pay a duty of 90 per cent instead of 60 per cent or 30 per cent at present

5 The import of complete motor cars motor trucks and motor lorries having been prohibited, the result of the new tariff would be to raise the price of motor car, by nearly Rs 700 and of trucks by Rs 2,500 (U.S.A.) and Rs 3,200 (U.K.) It may be possible to reduce these sums of Rs 2,500 and Rs 3,200 by limiting commission on sale, but the reduction so effected can of by any means be substantial

6 The result of the increased tariff would not only increase the sale price of motor vehicles but also increase the cost of repairs According to Delhi Transport Service, a vehicle doing 30,000 miles a year requires Rs 2,000 per year for purchase of replacements and spare parts The increase in duty on this amount will come to Rs 600 and work out to four pices per running mile of vehicle Adding additional depreciation due to increased cost, the additional expenditure per vehicle used for transport of passengers may come to ten pices or eleven pices or even an anna

7 The changes in the tariff rates we are told are being made in the interests of the motor industry the present tariff of 60 per cent being retained for parts which are being manufactured in India 90 per cent for parts which are not being so manufactured but are likely to be manufactured within a year or two years and the rest at the rate of 30 per cent

8 It is not at all clear on what basis the increase of 60 per cent in some cases and 30 per cent in other cases has been worked out

9. The Finance Bill is being passed for one year. Even if increase in duty is considered necessary, it is possible to specify parts which are likely to be manufactured in the financial year 1950-51 and high tariff, if any, may be prescribed only for those parts. Further extension of increased tariff will thus become dependent upon how the industry behaves during the year 1950-51. Thus while alleviating to some extent the burden of the common man, it will also provide a check for us and an incentive for the motor industry to manufacture parts on which increased tariff is imposed during the year 1950-51.

10. It is also not known why increased duty should apply to all parts and components, whether a particular brand is manufactured or not. To be a little more specific, if specialised parts of a particular make are not being manufactured in India, I see no reason why increased duty should apply to such parts.

11. I am most reluctant to add any burden to the hard lot of the common man. But if any such addition becomes necessary in the interests of the development of the motor vehicle industry, the increase must be limited to the minimum.

AJIT PRASAD JAIN.

NEW DELHI;

The 27th March, 1950.

IV

Difficult it is to effect root and branch changes, however, unwelcome, a Finance Bill may be. Under Part V, Chapter II of the Constitution of India the financial provisions are a bar to such changes. Shaping the measure in the way we would like to have is therefore not possible. The Finance Minister's Budget is based on the hope that the inducements offered to the capitalists would enable capital to plough back to industry. Since 1948 this policy was adumbrated by Sri Shanmukham Chetty and is being carried on further with little success. Budget for 1950-51 pays a heavy toll of over Rs. 15 crores in this regard in direct taxation, besides a variety of other essential concessions, to enable capital to plough back to business. Like all previous attempts, this is bound to fail leaving the Finance Minister sadder and wiser. It must be stated here that the estimate of Rs. 15 crores is bound to exceed. No concessions however good or great could induce capital, where capitalists are mainly speculators, conditions in South East Asia uncertain, while, those in India are static. The only regrettable factor in this is that the Honourable Finance Minister calls this a surplus budget and proceeds to confer his benefactions with a hope and earnestness, all his own.

2. *Is the Budget surplus.*—From the figures given clear it is that the budget is a deficit one. Its opening balances are estimated at Rs. 95.38 crores, while, the closing balance at Rs. 78.3 crores. Closing balance for 1949-50 is the estimated opening balance for 1950-51. The Finance Ministry, according to its own estimation, eats into its closing balance of 1950-51 from Rs. 95.38 crores to Rs. 78.87 crores i.e., by Rs. 17.01 crores. A deficit budget is thus converted into a surplus of Rs. 9.62 crores only after utilising Rs. 17.01 crores. This, in no sense, could be called a surplus. Take again these balances for 1940-41 estimates. When our opening and closing balances stood at Rs. 16.62 and Rs. 14.47 crores respectively, with a currency circulation of over Rs. 200 crores. This currency circulation has multiplied over five times. Purchasing power of the rupee is being reduced by over $3\frac{1}{2}$ times. Under the circumstances, further reduction of our opening balances, in utilising the same for ordinary expenses to this extent, could hardly be justifiable and much less desirable. Our opening and closing balances were at their peak in 1946-47 as also our cash balances

at the treasury. In my minute of dissent on last year's Finance Bill, I have shown how these balances have been gradually depleted. Painful it is, that the budget for 1950-51 should have further drawn on these depleting balances, even after heavy annual withdrawals from the sterling balances. Our dead weight debt in 1938-39 was at Rs. 229 crores, has in 1949-50 gone up to 815½ crores and is now of the order of about Rs. 1,000 crores. Under such depressing financial conditions, I consider it a doubtful wisdom to allow a tax concession of over Rs. 15 crores calculated at about 5 per cent of our taxation. Over and above the other substantial concessions conferred on this limited class of assessees, without any corresponding benefit to the States. Under such gloomy financial circumstances, remission of so much of direct taxation necessarily adds to inflation. If these benefits fail to plough back to capital, they deepen into a disaster. Again the so-called surplus Budget is the combined result of a reduction of Rs. 7·7 crores (out of a grant of Rs. 18·7 crores) for refugee Rehabilitation and a reduction of Rs. 8·67 crores from the food subsidies which ought to have been repealed also during the year 1950-51. Rehabilitation of over 1½ million East Pakistani refugees, besides those of West Pakistan, makes this reduced provision under the head highly anomalous. Regarding reductions in food subsidy, the less said the better. Examined from any point of view, there is little in the Budget to be called a surplus.

3 Tax Structure Defective.—The number of assessees over and above Rs. 15,000 total up to 56,000 in all. It is this limited class that get the benefit of tax remission out of 34 crores of our people. The capital expenditure in the budget is severely retrenched from Rs. 95 crores in 1949-50 to Rs. 62 crores in 1950-51 making it difficult for agricultural labour and ordinary labour to get work and employment. An analysis of the budget reveals how little is spent in nation-building activities. Similarly cities, towns and industrial centres, as also big industries, get all the attention possible, despite the declaration of faith by the Honourable Finance Minister in a mixed economy. The 5 lakhs of villages constituting India as also the cottage Industries, compared with cities, industrial places and industries, have to content themselves with declaration of faith in a mixed economy. I must confess that I am unable to support the Budget structure on the above basis. Frustration need not drive me to support a tax exemption to the level of Rs. 3,600 a year in India. I feel the exemption of Rs. 3,000 is far higher compared with Australia, our prosperous neighbour, with her semi-pastoral economy fixing her tax exemption, in terms of our currency at Rs. 2,180. Even so, Australia has about 27 per cent of her people as assessees, while in India, the assessees are only 15 per cent. (of one per cent.) taking them roughly at five lakhs and the population at 34 crores. Looking from the point of view of the generality of masses, there is no justification to raise the exemption beyond Rs. 3,000 provided in the Bill. Raising tax exemption further reduces also the respective share of provinces which I am hardly inclined to agree.

Items Nos. 75, 9, 10 and 11(a).—Enhanced Duty proposed to be levied on components of passenger cars and trucks is most disproportionate and is bound to raise truck and bus fares, the only conveyances available, if at all, to mafasil people. Protection given to our motor car industry is a necessity. But to give this, a year or two in advance of protection, vitiates the force of the proposal. With State control of import license and exchange, there can hardly be any fear of dumping foreign goods. Since a limited number, variety and quantity of component parts, of specified types of cars and trucks could only be manufactured in India within a year or two, heavy rates of taxation (as much as 90 per cent. *ad valorem* duty) on the import of component parts from 1st April, 1950 could hardly be justifiable. No wonder therefore that prices of component parts of all kinds of vehicles and trucks have shot up today

in the market. Inflation and black-marketing are thus let loose, making it difficult of subsequent control.

Generosity at the expense of Provinces.—Provinces have the responsibility of carrying on all nation-building activities with specified incomes leaving elastic sources of revenue to the centre. In 1946-47 budget, government righted this wrong, offering a full half of the net income of all sources of income-tax. The tax remission of Rs. 15 crores puts the provinces to a loss of about Rs. 7½ crores which is bound to deepen their deficits. This loss of Revenue after severely pruning of their central contributions to provinces for their post-war development schemes is a severe shock to all their activities within the limited sphere of provinces. Surprising it is, that while super-tax is being reduced and business tax abolished, tax on companies, which goes solely to benefit the finances of the Union, should only have been increased.

Salt Duty.—This was abolished along with Indian Independence. The Finance Bill however, has kept it as a formal annual fair to repeal this duty year after year. The Salt Act is still there. In the result, an army of officials and subordinate staff are being maintained in terms of the Salt Act rendering no useful purpose either to the public or to the industry. Technically they are ignorant to be of any use to salt manufacturers in demonstrating production and are a source of obstacle and annoyance to the growth of co-operative movement in salt areas. Government levy a cess to feed this unwanted army of officials. Conditions of salt leases reserve very wide powers for these officials, who are being utilised by monopolists to harass co-operative societies. A repeal or amendment of the Salt Act is therefore necessary in the interest of free and unfettered growth of co-operative movement and production of salt and save the salt industry from the unwarranted obstacle, oppression and the levy of a cess which unnecessarily raises the cost of salt production.

BISWANATH DAS.

NEW DELHI;

The 27th March, 1950.

(BILL NO. 17 OF 1950)

[AS AMENDED BY THE SELECT COMMITTEE]

(Words *sidelined* or *underlined* indicate the amendments suggested by the Committee; asterisks indicate the omissions.)

A

BILL

to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April, 1950.

Be it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the Finance Act, 1950.

2. **Income-tax and super-tax.**—(1) Subject to the provisions of sub-sections (3), (4) and (5), for the year beginning on the 1st day of April, 1950,—

(a) income-tax shall be charged at the rates specified in Part I of the First Schedule, and

(b) rates of super-tax shall, for the purposes of section 55 of the Indian Income-tax Act, 1922 (hereinafter referred to as **XI** of 1922 "the Income-tax Act"), be those specified in Part II of the First Schedule.

(2) In making any assessment for the year ending on the 31st day of March, 1951, there shall be deducted from the total income of an assessee, in accordance with the provisions of section 15A of the Income-tax Act, an amount equal to one-fifth of the earned income, if any, included in his total income but not exceeding in any case four thousand rupees.

(3) In making any assessment for the year ending on the 31st day of March, 1951,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" as reduced by the deduction for earned income appropriate thereto, or any income chargeable under the head "Interest on securities", or any income from dividends in respect of which by virtue of section 49B of the Income-tax Act he is deemed himself to have paid the income-tax imposed under that Act, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1949, on his total income the same proportion as the amount of such inclusions bears to his total income;

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Income-tax Act, the super-tax payable by the assessee on that portion of his total income which consists of such inclusion shall be an amount bearing to the total amount of super-tax payable, according to the rates applicable under the operation of the Indian Finance Act, 1949, on his total income the same proportion as the amount of such inclusion bears to his total income.

(4) In making any assessment for the year ending on the 31st day of March, 1951,—

(a) where the total income of a company includes any profits and gains from life insurance business, the super-tax otherwise payable by the company on the whole of such total income shall be reduced by an amount which bears to that super-tax the same proportion as the amount of such inclusion bears to its total income or by an amount computed at the rate of two annas in the rupee on the amount of such inclusion, whichever is less;

(b) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business, the income-tax and super-tax payable by the assessee on that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusion bears to his total income, so however that the aggregate of the taxes so computed in respect of such inclusion shall not in any case exceed the amount of tax payable on such inclusion at the rate of four and a half annas in the rupee.

(5) In cases to which section 17 of the Income-tax Act applies, the tax chargeable shall be determined as provided in that section, but with reference to the rates imposed by sub-section (1), and in accordance, where applicable, with the provisions of sub-sections (3) and (4) of this section.

(6) For the purposes of making any deduction of income-tax in the year beginning on the 1st day of April, 1950, under sub-section (2) or sub-section (2B) of section 18 of the Income-tax Act from any earned income chargeable under the head "Salaries", the estimated total income of the assessee under this head shall, in computing the income-tax to be deducted, be reduced by an amount equal to one-fifth of such earned income, but not exceeding in any case four thousand rupees; but no abatement shall be allowed by the person responsible for paying the salary in respect of any donations made by the assessee to which section 15B of the Income-tax Act is or may be applicable.

(7) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Income-tax Act, and the expression "earned income" has the meaning assigned to it in clause (6AA) of section 2 of that Act.

3. Amendment of Act XI of 1922.—With effect from the 1st day of April, 1950, the following amendments shall be made in the Income-tax Act, namely:—

(a) for sub-section (2) of section 1, the following sub-section shall be substituted, namely:—

"(2) It extends to the whole of India, except the State of Jammu and Kashmir, and applies also within that State to all persons in the service of the Government of India or the Government of any State other than the State of Jammu and Kashmir.";

(b) for clause (14A) of section 2, the following clause shall be substituted, namely:—

'(14A) "taxable territories" means—

(a) as respects any period before the 15th day of August, 1947, the territories then referred to as British India, but including Berar,

(b) as respects any period after the 14th day of August, 1947, and before the 26th day of January, 1950, the territories for the time being comprised in the Provinces of India, but excluding the merged territory of Cooch-Behar,

(c) as respects any period after the 25th day of January and before the 1st day of April, 1950, the territories comprised in Part A States, but excluding the merged territory of Cooch-Behar, and the territories comprised in Part C States, but excluding the States of Manipur, Tripura and Vindhya Pradesh,

(d) as respects any period after the 31st day of March, 1950, and before the 13th day of April, 1950,

the territory of India excluding the State of Jammu and Kashmir and the Patiala and East Punjab States Union, and

(e) as respects any period after the 12th day of April, 1950, the territory of India excluding the State of Jammu and Kashmir:

Provided that the taxable territories shall be deemed to include—

(a) the merged territories—

(i) as respects any period after the 81st day of March, 1949, for any of the purposes of this Act, and

(ii) as respects any period included in the previous year, for the purpose of making any assessment for the year ending on the 81st day of March, 1950, or for any subsequent year; and

(b) the whole of the territory of India excluding the State of Jammu and Kashmir—

(i) as respects any period, for the purposes of sections 4A and 4B,

(ii) as respects any period after the 31st day of March, 1950, for any of the purposes of this Act, and

(iii) as respects any period included in the previous year for the purpose of making any assessment of the year ending on the 31st day of March, 1951, or for any subsequent year; ;

(c) in *Explanation 4* to sub-section (1) of section 4,—

(i) after the words “merged territories”, the words “or, any of the Part B States other than the State of Jammu and Kashmir” shall be inserted, and

(ii) after the words “merged territory”, the words “or State” shall be inserted;

(d) in clause (xi) of sub-section (3) of section 4, for the figures “1950” the figures “1952” shall be substituted;

(e) for sub-section (2) of section 7, the following sub-section shall be substituted, namely:—

“(2) Any income which would be chargeable under this head if paid in the taxable territories shall be deemed to be so chargeable if paid in the State of Jammu and Kashmir by or on behalf of the Central Government or the Government of any State other than the State of Jammu and Kashmir.”;

(f) in sub-clause (a) of clause (vi) of sub-section (2) of section 10, for the figures "1950" the figures "1952" shall be substituted;

(g) in sub-section (2) of section 44B, for the word "one-twentieth", the word "one-sixth" shall be substituted;

(h) in section 60A, after the words "merged territories", the words and letter "or to any Part B State" shall be inserted;

(i) in sub-clause (a) of clause (iv) of sub-section (2) of section 61, after the words "merged territories" the words, figures and letter "or before the 1st day of April, 1950, in any Part B State other than the State of Jammu and Kashmir" shall be inserted; and

(j) in sub-section (8) of section 60,—

(i) in clause (a), after the words and letter "Part A State" the words and letter "or Part B State" shall be inserted,

(ii) in clause (b), after the word "Ajmer" the words "and Vindhya Pradesh" shall be inserted,

(iii) after clause (c), the following clause shall be inserted, namely:—

"(ee) in relation to Manipur and Tripura, the High Court of Assam;".

4. Alteration of certain duties of customs.—In the First Schedule **xxxii** of to the Indian Tariff Act, 1934, **1934.**

(a) for Items No. 75, 75(1), 75(2) and 75(3), the following Items shall be substituted, namely:—

75	Conveyances not otherwise specified and component parts and accessories thereof, other than parts and accessories of motor vehicles and batteries, also motor vans and motor lorries imported completely assembled.	Revenue	30% ad valorem.	..
75 (1)	Motor cars, including taxi cabs, imported completely assembled.	Preferential revenue.	60% ad valorem.	54% ad valorem. ..
75 (2)	Motor cycles and motor scooters, and articles (other than rubber tyres, tubes and batteries) adapted for use as parts and accessories thereof, except such articles as are also adapted for use as parts and accessories of other motor vehicles	Preferential revenue.	45% ad valorem.	37½% ad valorem. ..
75 (3)	Motor omnibuses imported completely assembled.	Preferential revenue.	30% ad valorem.	22½% ad valorem. ..

NOTE.—Motor vehicles, other than motor cycles and motor scooters, when imported otherwise than in a completely assembled condition, shall be dutiable as articles or parts of articles under Item No. 75 (9), 75 (10) or 75 (11), as the case may be."

(b) after Item No. 75(8), the following Items shall be inserted, namely:—

“75 (9) The following articles, and parts thereof, adapted for use as parts and accessories of motor vehicles other than motor cycles and motor scooters :—

Preferential rate *ad valorem.* 60% *ad valorem.* 54% *ad venue.*

(i) the following engine components: gaskets, rubber mountings, hose pipes other than brake hose pipes, fuel pump diaphragms, fan belts, rubber components, mufflers, exhaust pipes and tail pipes ; and

(ii) the following frame and body components: carpets, cushion springs, door and window fittings, trim materials (leather, jute canvas and leather cloth), bus bodies, station wagon bodies, truck bodies, steel cabs for lorries, pick up bodies, and parcel van bodies.

75 (10) The following articles, and parts thereof, adapted for use as parts and accessories of motor vehicles other than motor cycles and motor scooters:—

Preferential rate *ad valorem.* 90% *ad valorem.* 84% *ad venue.*

(i) the following engine components: brake hose pipes, crank shafts, cam shafts, cams, connecting rods, cylinder blocks and heads, manifolds, valves, valve springs, valve tappets, fly wheel, petrol tank, air cleaner, radiator, oil filter, fan, piston assembly (*viz.*, pistons, piston rings and gudgeon pins), fuel pump, water pump, timing gears and cylinder liners ;

(ii) the following electrical components: starting motor, generator, head lamps and other lamps, fuses, switches, voltage and current regulator, ignition coil, cables and wires, and horn ;

(iii) the following transmission and suspension components: ball and roller bearings, front and rear springs, king pins, shackle pins, bumpers, shock absorbers, spring hanger brackets, clutches, shackles, transmission gear and gear box, propeller shafts, universal joints, rear axle, front axle, front suspension, brake drums ; and

(iv) the following frame and body components: seat runners, short members of chassis frame, and brackets.

75 (11)(a) Articles [other than rubber Prefer. 30% ad 24% ad
 tyres, tubes, batteries and such ential *valorem. valorem.*
 other components as are specified revenue.
 in Items Nos. 75(9) and 75(10)]
 adapted for use as parts and ac
 cessories of motor vehicles other
 than motor cycles and motor
 scooters; and

(b) Parts of mechanically propelled ve. Prefer. 30% ad 22½% ad
 hicles and accessories, not other ential *valorem. valorem.*
 wise specified revenue.

Provide l that such articles as are ordina-
 rily also used for other purposes
 than as parts and accessories of
 motor vehicles shall be dutiable
 at the rate of duty specified for
 such articles."

5. Additional duties of customs.—When any goods chargeable
 with a duty of customs under the First Schedule to the Indian
 Tariff Act, 1934, or under that Schedule read with any notifica-
 tion of the Central Government for the time being in force, are
 assessed to duty, there shall, up to the 31st day of March, 1951,
 be levied and collected as an addition to, and in the same manner
 as, the total amount so chargeable—

XXXII of
 1934

(a) a sum equal to such amount, in the case of goods
 comprised in Items Nos. 22(2) and 22(4);

(b) a sum equal to one-half of such amount in the case of
 goods comprised in Items Nos. 48, 48(1), 48(2), 48(4), 48(5),
 48(6), 48(7), 48(8), 48(10) and 51(2), and in the case of textile
 manufactures specified in Item No. 49 when made wholly or
 mainly of any of the fabrics specified in Items Nos. 48, 48(1),
 48(4), 48(5), 48(7), or 48(10);

(c) a sum equal to two-fifths of such amount, in the case
 of goods comprised in Items Nos. 47(2), 59(2), 59(4), and
 59(5); and

(d) a sum equal to one-fifth of such amount, in the case
 of goods comprised in any Item of the said Schedule other
 than those specified in clause (a), (b), or (c) of this section or
 in the Second Schedule to this Act.

Provided that in the case of goods comprised in Items Nos. 48
 to 48(10), both inclusive, and in the case of textile manufactures
 specified in sub-items (a) and (b) of Item No. 49, if the duty of
 excise for the time being leviable on the goods or, as the case may
 be, on the fabrics of which such textile manufactures are wholly or
 mainly made, exceeds the sum of—

(i) the duty of customs chargeable under the First Schedule to the Indian Tariff Act, 1934 or under that Schedule read with any notification of the Central Government for the time being in force, and

(ii) the additional duty of customs chargeable under clause (b) or (d) of this section,

there shall, up to the 31st day of March, 1951, be levied and collected as a further addition to, and in the same manner as, the duties of customs so chargeable an amount equal to the aforesaid excess.

6. Substitution of revenue duties for protective duties.—In the First Schedule to the Indian Tariff Act, 1934, in each of the Items, No. 17 and No. 28(19),—

(a) for the word "Protective" in the third column, the word "Revenue" shall be substituted; and

(b) the entry in the last column shall be omitted.

7. Imposition and alteration of certain export duties.—In the Second Schedule to the Indian Tariff Act, 1934,—

(a) for Item No. 2, the following Item shall be substituted, namely:—

"2. Jute manufactures (including manufactures of Bimlipatnam jute or of mesta fibre), when not in actual use as coverings, receptacles or bindings for other goods—

(i) Sacking (cloth, bags, twist, yarn, rope and twine) Ton of Rs. 50
2,240 lbs.

(ii) Hessian Ton of Rs. 350
2,240 lbs.

(iii) All other descriptions of jute manufactures not otherwise specified. Ton of Rs. 80";
2,240 lbs.

(b) in Item No. 3, for the entry in the last column, the entry "Rs. 100" shall be substituted; and

(c) after Item No. 8, the following Items shall be inserted, namely:—

"9. Mustard oil lb. 8 annas

10(a) Iron or steel, other than sheets, the following: .. 45% ad
valorem.

ingots; blooms; billets; timbers; sheet bars and slabs; steel castings; heavy structurals (including heavy sections of joists, channels and angles); light structurals (including light sections of joists, channels, angles, tees and light rails of 30 lbs. and under); tyres, wheels and axles; shell steel ingots, blooms, billets and bars; heavy rails (over 30 lbs.); fish plates; dog-spikes; chair-spikes; screw-spikes; timplate; torqueplate; plates (ship-building); plates (ordinary mild steel and tensile); plates (bullet proof); bars (including flats, squares, rounds, hexagons and rods); bolt (including fish bolts), nuts and rivets; black or galvanised wire, whether plain or barbed; wire nails; wire (miscellaneous) hoops and strips; spring steel in any unfabricated or semifabricated form; tool steel in any unfabricated or semifabricated form; steel pressure pipes, tubes and fittings, coated or uncoated, excluding electrical conduit pipes; cast iron pressure pipes and specials; pressure pipes made of any substance reinforced with iron and steel; and wire ropes

(b) Iron or steel, black sheets and galvanised sheets (plain and corrugated). 30% ad
valorem.

11. Black pepper 30% *ad valorem.*"

8. Alteration of certain duties of central excise.—In the First Schedule to the Central Excises and Salt Act, 1944, **I of 1944**

(a) in Item No. 2, for the entries in the last columns against sub-items (1) (ii), (1) (iii), (2) (ii) and (2) (iii), the following entries shall, respectively, be substituted.—

"Two rupees, fourteen annas and six pies per gross of boxes" ;

"Two rupees and thirteen annas per gross of boxes" ;

"One rupee and fifteen annas per gross of boxes" ; and

"One rupee and fourteen annas per gross of boxes" .

(b) in Item No. 12, for the entries in the last column against sub-items (1) and (2), the entries "Twenty per cent *ad valorem*" and "Five per cent *ad valorem*" shall, respectively, be substituted.

9. Discontinuance of salt duty.—For the year beginning on the 1st day of April, 1950, no duty shall be levied on salt manufactured in, or imported by sea or land into, the territory of India excluding the State of Jammu and Kashmir.

10. Inland postage rates.—With effect from the 1st day of April, 1950, the Schedule contained in the Third Schedule to this Act shall be substituted for the First Schedule to the Indian Post Office Act, 1898 **VI of 1898**

11. Extension of certain Central Acts to certain Part B States.—(1) With effect from the 1st day of April, 1950, the following Acts, namely—

(i) the Sea Customs Act, 1878, **III of 1878**

(ii) the Land Customs Act, 1924, **IX of 1924**

(iii) the Indian Tariff Act, 1934, and **XXXII of 1934**

(iv) the Central Excises and Salt Act, 1944, **I of 1944**

and all rules and orders made thereunder which are in force immediately before the commencement of this Act, are hereby extended to, and shall be in force in, the whole of India except the State of Jammu and Kashmir.

(2) With effect from the 1st day of April, 1950, the Indian Post Office Act, 1898 and all rules and orders made thereunder which are in force immediately before the commencement of this Act are hereby extended to, and shall be in force in, the whole of India.

(3) With effect from the 1st day of April, 1950, the amendments specified in the Fourth Schedule shall be made in the Acts specified therein, difficulty.

12. Removal of difficulties.—If any difficulty arises in giving effect to the provisions of any of the Acts, rules or orders extended by section 3 or section 11 to any State or merged territory, the Central Government may, by order, make such provision, or give such direction, as appears to it to be necessary for removing the

13. Repeals and savings.—(1) If immediately before the 1st day of April, 1950 there is in force in any Part B State other than Jammu and Kashmir or in Manipur, Tripura or Vidhyan Pradesh or in the merged territory of Cooch-Bihar any law relating to income-tax or super-tax or tax on profits of business that law shall

XLIX of 1922.

cease to have effect except for the purposes of the levy, assessment and collection of income-tax and super-tax in respect of any period not included in the previous year for the purposes of assessment under the Indian Income-tax Act, 1922, for the year ending on the 31st day of March, 1951, or for any subsequent year, or, as the case may be, the levy, assessment and collection of the tax on profits of business for any chargeable accounting period ending on or before the 31st day of March, 1949.

Provided that any reference in any such law to an officer, authority, tribunal or court shall be construed as a reference to the corresponding officer, authority, tribunal or court appointed or constituted under the said Act, and if any question arises as to who such corresponding officer, authority, tribunal or court is, the decision of the Central Government thereon shall be final.

Provided further that where under any such law, tax is chargeable on the total income including agricultural income, the assessment shall be made by the corresponding officer or authority referred to in the preceding proviso only in respect of income other than agricultural income, and the tax payable on such income shall be an amount bearing to the total amount of tax which would have been payable under the State law if a combined assessment had been made, the same proportion as such income bears to the total income including the agricultural income, so however that for this purpose any reduction of tax allowed on the agricultural income by the State law shall not be taken into account.

VI of 1898

(2) If immediately before the 1st day of April, 1950, there is in force in any State other than Jammu and Kashmir a law corresponding to, but other than, an Act referred to in subsection (1) or (2) of section 11, such law is hereby repealed with effect from the said date; and if immediately before the said date there is in force in the State of Jammu and Kashmir a law corresponding to the Indian Post Office Act, 1898, such law is hereby repealed with effect from the said date:

Provided that such repeal shall not affect (a) the previous operation of the corresponding law, or (b) any penalty, forfeiture or punishment ordered in respect of an offence committed against any such law, or (c) any investigation, legal proceeding or remedy in respect of such penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

THE FIRST SCHEDULE

(See section 2)

PART I

Rates of Income-tax

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraph B or C of this Part applies—

	Rate
1. On the first Rs. 1,500 of total income	Nil.
2. On the next Rs. 3,500 of total income	Nine pies in the rupee.
3. On the next Rs. 5,000 of total income	One anna and nine pies in the rupee.

Rate

4. On the next Rs. 5,000 of total income	Three annas in the rupee.
5. On the balance of total income	Four annas in the rupee.

Provided that—

(i) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed the limit specified below;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds the said limit;

(iii) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds the said limit the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income-tax payable on the income so reduced at the rates herein specified,— whichever is less.

The limit referred to in the above proviso shall be—

(i) Rs. 7,200 in the case of every Hindu undivided family which satisfies us at the end of the previous year either of the following conditions, namely:—

(a) that it has at least two members entitled to a share on partition who are not less than 18 years of age; or

(b) that it has at least two members entitled to a share on partition neither of whom is a lineal descendant of the other and both of whom are not lineally descended from any other living member of the family; and

(ii) Rs. 3,600 in every other case.

B. In the case of every company—

Rate

On the whole of total income Four annas in the rupee:

Provided that in the case of a company which, in respect of its profits liable to tax under the Income-tax Act for the year ending on the 31st day of March, 1951, has made the prescribed arrangements for the declaration and payment within the territory of India excluding the State of Jammu and Kashmir, of the dividends payable out of such profits, and has deducted super-tax from the dividends in accordance with the provisions of sub-section (3D) or (3E) of section 18 of that Act—

(i) where the total income, as reduced by six and a half annas in the rupee and by the amount, if any, exempt from income-tax, exceeds the amount of any dividends (including dividends payable at a fixed rate) declared in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March, 1951, and no order has been made under sub-section (7) of section 23A of the Income-tax Act a rebate shall be allowed at the rate of one anna per rupee on the amount of such excess;

(ii) where the amount of dividends referred to in clause (i) above exceeds the total income as reduced by six and a half annas in the rupee and by the amount, if any, exempt from income-tax, there shall be charged on the total income an addi-

tional income-tax equal to the sum, if any, by which the aggregate amount of income-tax actually borne by such excess (hereinafter referred to as "the excess dividend") falls short of the amount calculated at the rate of five annas per rupee on the excess dividend.

For the purposes of the above proviso, the expression "dividend" shall have the meaning assigned to it in clause (6A) of section 2 of the Income-tax Act, but any distribution included in that expression, made during the year ending on the 31st day of March, 1951, shall be deemed to be a dividend declared in respect of the whole or part of the previous year.

For the purposes of clause (ii) of the above proviso, the aggregate amount of income-tax actually borne by the excess dividend shall be determined as follows:—

(i) the excess dividend shall be deemed to be out of the whole or such portion of the undistributed profits of one or more years immediately preceding the previous year as would be just sufficient to cover the amount of the excess dividend and as have not likewise been taken into account to cover an excess dividend of a preceding year;

(ii) such portion of the excess dividend as is deemed to be out of the undistributed profits of each of the said years shall be deemed to have borne tax,—

(a) if an order has been made under sub-section (1) of section 23A of the Income-tax Act, in respect of the undistributed profits of that year, at the rate of five annas in the rupee, and

(b) in respect of any other year, at the rate applicable to the total income of the company, for that year reduced by the rate at which rebate, if any, was allowed on the undistributed profits.

C. In the case of every local authority and in every case in which, under the provisions of the Income-tax Act, income-tax is to be charged at the maximum rate—

On the whole of total income	Rate
	Four annas in the rupee.

PART II

Rules of Super-tax

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which any other paragraph of this Part applies—

1. On the first Rs. 25,000 of total income	Rate
2. On the next Rs. 13,000 of total income	Nil.
3. On the next Rs. 13,000 of total income	Three annas in the rupee.
4. On the next Rs. 13,000 of total income	Four annas in the rupee.
5. On the next Rs. 13,000 of total income	Six annas in the rupee.
6. On the next Rs. 13,000 of total income	Seven annas in the rupee.
	Seven and a half annas in the rupee.

Rate

7. On the next Rs. 50,000 of total income . . . Eight annas in the rupee.
 8. On the balance of total income . . . Eight and a half annas in the rupee.

B. In the case of every local authority:—

Rate

On the whole of total income Two and a half annas in the rupee.

C. In the case of an association of persons being a co-operative society (other than the San katta Saltworkers' Society in the State of Bombay) for the time being registered under the Co-operative Societies Act, 1912 or under any law of a State governing the ~~II of 1912~~ registration of co-operative societies—

Rate

1. On the first Rs. 25,000 of total income . . . Nil.
 2. On the balance of total income Two and a half annas in the rupee.

D. In the case of every company:—

Rate

On the whole of total income Four and a half annas in the rupee:

Provided that—

(i) a rebate at the rate of three annas per rupee of the total income shall be allowed in the case of any company which—

(a) in respect of its profits liable to tax under the Income-tax Act for the year ending on the 31st day of March, 1951, has made the prescribed arrangements for the declaration and payment in the territory of India excluding the State of Jammu and Kashmir of the dividend payable out of such profits and for the deduction of super-tax from dividends in accordance with the provisions of sub-section (3D) or (3E) of section 18 of that Act, and

(b) is a public company with total income not exceeding Rs. 25,000;

(ii) a rebate at the rate of two annas per rupee of the total income shall be allowed in the case of any company which satisfies condition (a), but not condition (b), of the preceding clause; and

(iii) a rebate at the rate of one anna per rupee of the total income shall be allowed in the case of any company which, not being entitled to a rebate under either of the preceding clauses, is—

(a) a public company whose shares were offered for sale in a recognised stock exchange at any time during the previous year, or

(b) a company all of whose shares were held at the end of the previous year by one or more such public companies as aforesaid:

Provided further that the super-tax payable by a company the total income of which exceeds Rs. 25,000 shall not exceed the aggregate of—

(a) the super-tax which would have been payable by the company if its total income had been Rs. 25,000, and

(b) half the amount by which its total income exceeds Rs. 25,000.

Explanation—For the purposes of this paragraph of this Part, a company shall be deemed to be a public company only if it is neither a private company within the meaning of the Indian Companies Act, 1913, nor a company in which shares carrying more than fifty per cent. of the total voting power were, at any time during the previous year, held or controlled by less than six persons

VII of 1913

THE SECOND SCHEDULE

(See section 5)

Goods on which additional duty of customs is not leviable.

A. Goods comprised in the following items of the First Schedule of to the Indian Tariff Act, 1934, namely—

2, 4, 4(1), 4(3), 4(4), 4(5), 7(1), 8(1), 8(2), 8(3), 8(4), 8(5), 9(3), 9(5), 9(6), 9(7), 11(4), 11(5), 12(6), 13(4), 13(8), 13(9), 15, 15(5), 15(9), 15(10), 15(11), 15(12), 16, 16(1), 16(3), 20(1), 20(2), 20(3), 20(4), 20(5), 20(6), 20(7), 20(8), 20(9), 21(8), 21(4), 21(5), 21(6), 21(7), 21(8), 21(9), 22(3), 22(5), 24, 24(1), 24(2), 24(3), 25(1), 27(1), 27(2), 27(8), 27(4), 27(5), 27(6), 27(9), 28, 28(8), 28(14), 28(15), 28(16), 28(17), 28(18), 28(19), 28(20), 28(21), 28(22), 28(23), 28(24), 28(25), 28(26), 28(27), 28(28), 28(29), 28(30), 29, 29(1), 80, 80(1), 80(2), 80(9), 80(10), 80(11), 80(12), 80(13), 81(4), 84(3), 40(4), 40(5), 40(6), 40(7), 43, 44, 44(1), 45, 45(3), 46(3), 49(c), 49(2), 51, 52(4), 58(2), 55, 55(1), 55(2), 55(8), 60, 60(2), 60(8), 60(4), 60(5), 60(6), 61(2), 61(3), 61(8), 61(9), 61(11), 62(1), 62(2), 63(14), 63(30), 63(81), 63(82), 63(33), 63(34), 63(35), 64, 64(3), 64(4), 65, 66, 66(1), 67, 67(1), 67(2), 68, 68(2), 69(2), 70, 70(1), 70(2), 70(3), 70(4), 70(5), 70(6), 70(9), 71(2), 71(3), 71(7), 71(8), 71(9), 71(10), 72, 72(1), 72(2), 72(3), 72(4), 72(5), 72(11), 72(12), 72(13), 72(14), 72(15), 72(16), 72(17), 72(18), 72(19), 72(20), 72(21), 72(22), 72(23), 72(24), 72(25), 72(26), 72(27), 72(28), 72(33), 73(2), 73(4), 73(7), 73(8), 73(9), 73(10), 73(11), 73(12), 78(18), 78(14), 78(15), 74(2), 74(4), 75, 75(1), 75(2), 75(3), 75(5), 75(6), 75(7), 75(8), 75(9), 75(10), 75(11), 77(2), 77(4), 77(5), 78, 78(1), 79, 82(1), 84, 84(1), 85(1).

B. Goods comprised in the following items of the First Schedule of to the Indian Tariff Act, 1934, when the Customs Collector is satisfied that such goods are the produce or manufacture of Burma, namely:—

No. 7 (potatoes and onions only) and Nos. 9, 9(3), 13(2), 17 and 84(4) (a)

1934

THE THIRD SCHEDULE

(See section 10)

Schedule to be substituted for the First Schedule to the Indian Post Office Act, 1898.

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THE FIRST SCHEDULE

INLAND POSTAGE RATES

(See section 7)

Letters

For a weight not exceeding one tola	Two annas.
For every tola, or fraction thereof, exceeding one tola	One anna.

Postcards

Single	Nine pies.
Reply	One and a half annas.

Book, Pattern and Sample Packets

For the first five tolas or fraction thereof	Nine pies.
For every additional two and a half tolas, or fraction thereof, in excess of five tolas	Three pies.

Registered Newspaper

For a weight not exceeding ten tolas	Three pies.
For a weight exceeding ten tolas and not exceeding twenty tolas	Six pies.
For every twenty tolas, or fraction thereof, exceeding twenty tolas	Six pies.

In the case of more than one copy of the same issue of a registered newspaper being carried in the same packet—

For a weight not exceeding ten tolas	Six pies.
For every additional five tolas, or fraction thereof, in excess of ten tolas	Three pies.

Provided that such packet shall not be delivered at any addressee's residence but shall be given to a recognised agent at the post office.

Parcels

For a weight not exceeding forty tolas	Six annas.
For every forty tolas, or fraction thereof, exceeding forty tolas	Six annas."

THE FOURTH SCHEDULE

(See section 11)

*Amendments of Central Acts*I. *The Sea Customs Act, 1878 (VIII of 1878).*

(1) Throughout the Act, for the words "the States" wherever they occur, the word "India" shall be substituted.

(2) In section 1, for the words and letter "Part B States", the words "the State of Jammu and Kashmir" shall be substituted.

(8) In section 3,—

(a) for clause (e), the following clauses shall be substituted, namely :—

‘‘(e) ‘foreign port’’ means any place not within the territory of India;

‘‘(ee) ‘India’’ means the territory of India excluding the State of Jammu and Kashmir;’’ and

(b) clause (k) shall be omitted.

(4) After section 3, the following section shall be inserted, namely —

‘‘3A *Power to define customs frontiers.*—The Central Government may, by notification in the Official Gazette, define the customs frontiers of India.”

(5) In section 18,—

(a) for the word “States” wherever it occurs, the word “India” shall be substituted; and

(b) for clauses (f), (i) and (j), the following clauses shall, respectively, be substituted, namely :—

“(f) piece-goods manufactured outside India, such as are ordinarily sold by length or by the piece, if each piece has not been conspicuously marked—

(i) with the name of the manufacturer, exporter, or wholesale purchaser in India, of the goods, and

(ii) with the real length of the piece in standard yards, inscribed in the international form of numerals;’’

“(i) cotton yarn manufactured outside India, such as is ordinarily imported in bundles, if each bundle containing such yarn has not been conspicuously marked—

(i) with the name of the manufacturer, exporter, or wholesale purchaser in India, of the goods, and

(ii) with an indication of the weight and the count of the yarn contained in it, in accordance with the rules made under section 20 of the Indian Merchandise Marks Act, 1889;’’

“(i) cotton sewing, darning, crochet or handicraft thread manufactured outside India, if each of the units in which the thread is supplied has not been conspicuously marked—

(i) with the name of the manufacturer, exporter, or wholesale purchaser in India, of the goods, and

(ii) with the length or weight of the thread contained in it and in such other manner as is required by the rules made under section 20 of the Indian Merchandise Marks Act, 1889.”

II. *The Land Customs Act, 1924 (XIX of 1924).*

(1) In sub-section (2) of section 1, for the words and letter “Part B States” the words “the State of Jammu and Kashmir” shall be substituted

(2) In clause (e) of section 2, for the words and letters “the territories comprised within Part A States and Part C States” the word “India” shall be substituted.

(6) In sub-section (2) of section 7, for the words and letters "Part A States and Part C States", the word "India" shall be substituted

(4) In the Schedule, for the word and figure "Sections 4", the word, figures and letter "Sections 3 1, 4" shall be substituted

III. The Indian Tariff Act, 1934 (XXXII of 1934)

(1) In sub-section (2) of section 1, for the words and letter "Part B States" the words "the State of Jammu and Kashmir" shall be substituted

(2) In sub-section (4) of section 2, section 5 and section 6, for the words and letters "a Part A State or a Part C State" wherever they occur, the word "India" shall be substituted.

(3) In section 5, sub-section (1) of section 9 and the First Schedule, for the words and letters "Part A States and Part C States" the word "India" shall be substituted.

(4) In section 8, for the words "the States" the word "India" shall be substituted.

(5) In the First Schedule, Item No. 12(1) shall be omitted.

IV. The Central Excises and Salt Act, 1944 (I of 1944).

(1) Throughout the Act, for the words "the States" wherever they occur, the word "India" shall be substituted

(2) In sub-section (2) of section 1, for the words and letter "Part B States" the words "the State of Jammu and Kashmir" shall be substituted

(3) In section 2,—

(a) after clause (e), the following clause shall be inserted, namely:—

'(ee) "India" means the territory of India excluding the State of Jammu and Kashmir; and

(b) clause (jj) shall be omitted.

(4) In section 5, for the words and letter "the territory of a Part B state" the words "the State of Jammu and Kashmir" shall be substituted.

(5) In clause (iii) of sub-section (2) of section 87, for the words and letter "any specified Part B State" the words "the State of Jammu and Kashmir" shall be substituted

V. The Indian Post Office Act, 1898 (VI of 1898).

(1) Throughout the Act, for the words "the States" wherever they occur the word "India" shall be substituted.

(2) The following shall be omitted, namely:—

- (a) in sub-section (2) of section 1, the words and letter "except Part B States";
- (b) clause (1) of section 2;
- (c) in sub-section (1) of section 36 and in sub-section (1) of section 40, the words "Indian State corresponding to n" and the words and letter "Part B State"; and
- (d) section 57.

M. N. KAUL,

Secretary.